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ABSTRACT

It was the purpose of this 1958 paper to demonstrate to the Commission on the Rights, Liberties, and Responsibilities of the American Indian how Indian tribes were first dealt with as sovereign nations and how this concept has changed through time (particularly from 1948 to 1958). When the sovereign-nations or treaty period came to a close, the Indian people were moved under the domination of Congress and the Bureau of Indian Affairs (BIA) and became wards of the U.S. Government. Next came a period when the Indians were compelled through the Allotment Act and educational influences to move toward complete acculturation and full citizenship, with those Indian people who remained on reservations being encouraged to adopt constitutions and to incorporate under charters as local communities that could bargain with business concerns, counties, states, and the Federal Government. The successes of the tribal groups led to termination of Federal responsibilities for those tribes because acculturation was assumed; however, the terminated tribes met with failure due to lack of resources. The result was fear by other Indian tribes that success meant termination. Thus, as long as the Termination Resolution remains on the books, it is felt that it will be difficult for Indian people to take full advantage of Federal programs. The paper contains 4 sections: The Historical Setting, The Recent Background to Termination Legislation, Canadian Enfranchisement Compared to Termination, and Identifying Kinds of Federal Withdrawal. (LS)

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INDIAN AFFAIRS

NO. 2

A Work Paper on Termination: with an Attempt to Show Its Antecedents

S. LYMAN TYLER

A Publication of the Institute of
American Indian Studies

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Brigham Young University

Provo, Utah

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PREFACE

This study was prepared for a work session in a series of meetings held by the Commission on the Rights, Liberties, and Responsibilities of the American Indian late in 1958. Even then the pressure for termination programming had tapered off.

Although six years have elapsed, we have chosen to publish the paper, without any attempt to bring it up-to-date, as a document reflecting the deep concern occasioned by the termination idea particularly during the decade from 1948 to 1958. It appears now as one part of a series on Indian Affairs.

INTRODUCTION

The idea that the Indian would soon give up his "savage" ways and adopt those of the surrounding "superior," "more highly civilized," non-Indian culture has been prevalent since Europeans came to America to stay.

At first it was thought that observation alone would lead the Indian to adopt the non-Indian way of life. When, by the 1820's, it became evident that it was going to take more time for this change to occur than had been expected, the removal policy was promulgated, having in mind the idea that further west the Indian tribes could be given an extended opportunity to effect the desired change. Meanwhile, the non-Indians would have the advantage of the land they coveted.

Soon, however, our vision extended to Texas, New Mexico, California, and Oregon. Thereafter, the reservation policy became a necessity, again to give the Indians more time; for by the later 1840's Thomas Hart Benton was expressing the opinion of another generation of non-Indians looking west that the Indians must accept civilization or be extinguished.

Although armed force came to be used more and more by the United States after 1830 as a club over the heads of the Indians, lip service was given to the idea of diplomatic relations and treaty making until 1871. After that date, but not beginning then, the Indians became more and more the creatures of Congress and of its executive servant the Bureau of Indian Affairs. This is not to say that they had no rights or that their rights were completely disrespected, but the rights they had tended to be interpreted by the United States on a unilateral basis.

I am attempting in this paper, very sketchily, to allow the commission to see the transition of the Indian tribes from sovereign nations to be dealt with bilaterally, according to the law of nations, to subject peoples under the domination of Congress and the Bureau of Indian Affairs; then gradually there was a change toward the idea of compelling the Indian, through the Allotment Act and through other "civilizing" influences, to move toward complete acculturation and full citizenship; and finally, at first by persuasion rather than compulsion, the Indians who remained in Indian communities were encouraged to adopt constitutions and to incorporate as tribal groups under charters as local communities that could bargain with business concerns, with counties, with states, and with the national government. Bilateralism, thereby, took an upward swing.

More recently, however, a fear has arisen in the minds of concerned persons that through the use of pressure tactics, through overselling programs, and by other devices Congress through the Indian Bureau is returning to methods bordering on compulsion and unilateralism to achieve

what has always been an objective of the United States, the acculturation and final integration into the predominant culture.

It is further feared that if these undemocratic tactics are being used and if they continue the gains of the last thirty years may be lost, and with them may be lost the last opportunity to, paraphrasing the Meriam report, make the closing chapters of our relationship with the Indian "a national atonement" and "a model for all governments concerned with the development and advancement of a retarded race."

Always the desire of the United States has been that the Indian would become more like us, that is like the predominant culture, or, failing this, that he would at least become enough like us so that he could live among us without giving us a guilty conscience. Besides this our acquisitive nature would not allow us to see the Indian in possession of unused resources that might be used for our enrichment or, as recreational areas, for our government.

To achieve these long range desires we have used different methods at different times. Some of the names we use to describe the methods being practiced today are termination, withdrawal, emancipation, first class citizenship, relocation, etc. As always, we have the Indians' best interest at heart, but what people is wise enough to rule another people? In a democracy, the people may change the government; while in an autocracy, the government may change the people. Under the law and the treaties of the United States, I believe the Indians deserve more opportunity for self-determination than they have received.

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THE HISTORICAL SETTING

The Spanish, French, and English agreed that the American Indians were people able to reason and capable of conversion to Christianity. Their rights in the land they occupied were to be respected. It was to be taken from them only by mutual agreement or by lawful wars in the name of the sovereign that the particular Europeans represented.

In their relationship with the various tribes, the conduct of the European states was governed by the law of nations. The sovereignty of the Indian tribe was to be respected.

After the Revolution the American colonists found themselves surrounded by what were then relatively powerful Indian peoples. The United States adopted the method of treating with these sovereign nations by diplomatic relations. Treaties between the United States and the Indian tribes, in the interest of peace and friendship or to acquire lands, were bilateral agreements.

The United States as a nation was in a rather precarious position until after the War of 1812. Victory, such as it was, over England seemed to help solidify the new nation and cause its states and citizens to rally together as they had not previously done.

As the nation pushed westward, even at this early date, the Indians were in the way. Although Thomas Jefferson wrote "The ultimate point of rest and happiness for them is to let our settlements and theirs meet and blend together, to intermix, and become one people...," he also suggested that the new nation had "the exclusive privilege of acquiring the native right by purchase or other just means." Further, "there are but two means of acquiring the native title. First, war; for even war may, sometimes, give a just title. Second, contracts or treaty."

Jefferson had outlined the various means that could be used to deal with the Indians. He suggested further that the United States should "develop in them [the Indians] the wisdom of exchanging what they can spare and we want [land], for what we can spare and they want [the arts of civilization]." A decade later Andrew Jackson wrote to James Monroe at the time of his first inauguration: "I have long viewed treaties with the Indians an absurdity not to be reconciled to the principles of our government."

The contest that developed between Jackson, the President, and Marshall, Chief Justice of the Supreme Court, demonstrated that the United States would not honor her treaties with the Indian tribes when it seemed disadvantageous to do so. This precedent set by a man holding the highest office of the land was to be followed again and again as the nation expanded.

When United States territory reached from sea to sea, as our boundaries were filled out and even the desert attracted settlers, there was no longer space to which the Indians could be removed. As wagon trains, the stagecoach, the pony express, and the railroad crossed the nation, the Indians were again in the way. The reservation system was developed and army posts were established to keep the Indians from attempting to stay the tide of humanity that flowed ever westward.

With the coming of the gold seekers, the cattlemen, and the homesteaders, it was soon evident that the army, which could be used as necessary to keep Indians on their reservations would not be used to keep white men off of them. The relationship between the United States and the Indian tribes had admittedly become a one-way proposition. The Indian could either consent to unilateral agreements or be overcome by a nation known to possess relatively unlimited power. Some chose to die in the Indian wars rather than to give up all that seemed worth living for.

It was just as well that in 1871 the farce of treaty making was ended. When, during the 1870's, friends of the Indian groups began to develop, there was plenty of ammunition available to the crusaders. From 1879 to 1887, there was almost constant pressure on Congress to give individual Indians a bonafide title to land. The Indian friends had two purposes in mind: First, there was the feeling that somehow the individual ownership of land in itself was a civilizing influence. Second, it was hoped that placing the land in individual ownership would make it at least more difficult to take it away from the individual Indians.

It is always difficult to discover beginnings. Actually lands were allotted to Indians individually by some of the colonies during the colonial period. By a treaty with the Oneida nation in 1798, tribal lands were allotted to individual Indians for occupancy, use, and ownership.[1] Treaties were made, beginning in 1854, specifically authorizing the President to allot tribal lands to Indians individually.[2]

It is easy for us to look back on the Allotment Act of 1887 and call it a failure, but to friends of the Indian groups, almost unanimously, it seemed the solution to the Indian problem.[3] Perhaps we should find in this a warning of the difficulties that surround attempts by one people, even in sincerity and friendship, to decide what is best for another.

Senator Pendleton of Ohio very dramatically stated the position of the Indian during the debate on allotment of Indian lands in 1881:[4]

> Now, Mr. President, I do not believe, and I say it frankly, that any bill can be framed upon this subject of Indian control which is entirely consistent, and entirely satisfactory; and the reason is a very simple one. There are difficulties surrounding this subject which are inherent and artificial, and in both aspects they are very great. They arise from the fact that

our constitutions and our laws were passed for the control and the government of the white citizens of the country and not for these Indian tribes; they arise from the fact that when those constitutions and laws were passed these Indians were treated as quasi-foreign nations; that treaties were made with them; that a vast territory was set apart for them in which they could indulge in their natural habits; habits entailed upon them by centuries of practice, indulge in the chase, in fishing, and in war among themselves. We had no connection with them except by the passage of the non-intercourse law, to prevent the intrusion of our own citizens among them. As long as they confined themselves to their reservation--I mean that vast expanse of territory which was known under the name of the Indian Territory, or a few years ago as the unorganized territory of the United States--they might pursue the chase, they might pursue fishing, they might make war among themselves, they might commit any barbarities and wrongs among themselves, and we take no notice; and it was only here and there by a sporadic and ineffectual attempt at teaching them the arts of civilized life that we had any connection with them whatever except when they intruded upon our territory and marauded upon our citizens.

It was easy enough comparatively to deal with a class of men whom we recognized as nations, with whom we made treaties, whom we segregated from our citizens, and to whom we assigned that vast expanse of western territory. But that condition of things has entirely changed; the times have passed; the conditions of this Government and those governments (if I may call the Indian tribes such) have entirely changed. Our villages now dot their prairies; our cities are built upon their plains; our miners climb their mountains and seek the recesses of their gulches; our telegraphs and railroads and post offices penetrate their country in every direction; their forests are cleared and their prairies are plowed and their wildernesses are opened up. The Indians cannot fish and hunt. They must either change their mode of life or they must die. That is the alternative presented. There is none other. We may regret it, we may wish it were otherwise, our sentiments of humanity may be shocked by the alternative, but we cannot shut our eyes to the fact that that is the alternative, and that these Indians must either change their modes of life or they will be exterminated. I say, Mr. President, in order that they may change their modes of life, we must change our policy; we must give them, and we must stimulate within them to the very largest degree, the idea of home, of family, and of property. These are the very anchorages of civilization; the commencement of the dawning of these ideas in the mind is the commencement

of the civilization of any race, and these Indians are no exception. It must be our part to seek to foster and to encourage within them this trinity upon which all civilization depends--family, and home, and property. These are the institutions that make the barbarian a civilized man, and as these are developed they make the civilized man that which we are told it was said he would be if he ate of the tree of knowledge--like unto God, discerning good and evil.

This bill is all in that direction. It means nothing else. It means the allotment of these tribal lands to the individual; it means to encourage the idea of property; it means to encourage the idea of home; it means to encourage the idea of family; it tends to break up the tribe; it tends to build up the home; it tends to anchor the family, and it tends to encourage the love of home and family by the pleasures and advantages and benefactions and beneficences which the idea of individual property will give.

D'Arcy McNickle's comment on Senator Pendleton's remarks is a classic:[5]

> In the heat of such a discussion, it would not have occurred to any of the debaters to inquire of the Indians what ideas they had of home, of family, and of property. It would have been assumed, in any case, that the ideas, whatever they were, were without merit since they were Indian.

Commissioner Thomas J. Morgan's first annual report gives us "a few simple, well-defined, and strongly cherished convictions" that reveal the opinions guiding the Bureau of Indian Affairs in 1889:[6]

> First--The anomalous position heretofore occupied by the Indians in the country cannot much longer be maintained. The reservation system belongs to a "vanishing state of things:" and must soon cease to exist.
>
> Second--The logic of events demands the absorption of the Indians into our national life, not as Indians, but as American citizens.
>
> Third--As soon as a wise conservatism will warrant it, the relations of the Indians to the Government must rest solely upon the full recognition of their individuality. Each Indian must be treated as a man, be allowed a man's rights and privileges, and be held to the performance of a man's obligations. Each Indian is entitled to his proper share of the inherited wealth of the tribe, and to the protection of the courts in his "life, liberty, and pursuit of happiness." He is not entitled to be supported in idleness.

Fourth--The Indians must conform to "the whiteman's ways," peaceably if they will, forcibly if they must. They must adjust themselves to their environment, and conform their mode of living substantially to our civilization. This civilization may not be the best possible, but it is the best the Indians can get. They cannot escape it, and must either conform to it or be crushed by it.

Fifth--The paramount duty of the hour is to prepare the rising generation of Indians for the new order of things thus forced upon them. A comprehensive system of education modeled after the American public-school system, but adapted to the special exigencies of the Indian youth, embracing all persons of school age, compulsory in its demands and uniformly administered, should be developed as rapidly as possible.

Sixth--The tribal relations should be broken up, socialism destroyed, and the family and the autonomy of the individual substituted. The allotment of lands in severalty, the establishment of local courts and police, the development of a personal sense of independence, and the universal adoption of the English language are means to this end.

In Theodore Roosevelt's message to Congress, December 3, 1901, we find the same urgency as expressed by Senator Pendleton in 1881 (and as expressed by House Concurrent Resolution 108, in 1953):[7]

> In my judgment the time has arrived when we should definitely make up our minds to recognize the Indian as an individual and not as a member of a tribe. The General Allotment Act is a mighty pulverizing engine to break up the tribal mass. It acts directly upon the family and the individual. Under its provisions some sixty thousand Indians have already become citizens of the United States. We should now break up the tribal funds, doing for them what allotment does for the tribal lands; that is, they should be divided into individual holdings.

Allotment was the keystone of federal Indian policy from the Dawes Act of 1887 until about 1921 to 1923, when the combination of Commissioner Burke and Secretary Work was able to stem the tide of forced patents instigated by Commissioner Sells in 1917 and continuing until 1921. In relation to the policy of forcing Indians declared by Bureau representatives to be competent to accept patents, Commissioner Sells stated:[8]

> This is a new and far-reaching declaration of policy. It means the dawn of a new era in Indian administration. It means that the competent Indian will no longer be treated as half ward and half citizen. It means reduced appropriations by the Government and more self-respect and independence

> for the Indian. It means the ultimate absorption of the Indian race into the body politic of the Nation. It means, in short, the beginning of the end of the Indian problem.

It would be difficult to find a more appropriate rejoinder to the enthusiasm of Cato Sells than the following paragraph from the Hoover Commission's evaluation of the allotment policy:[9]

> Two-thirds of Indian-owned land, including much of the best land, was alienated before the allotment policy was abandoned. If the ninety million acres lost through the process had remained in Indian ownership, the problem of poverty among most tribes could be solved with less difficulty and with more certainty today; and assimilation could take place at a satisfactory level with a minimum of public expense.

A further paragraph from the same source is worthy of quotation:

> The policy [allotment] obviously put the cart before the horse. Although ownership of property is a characteristic feature of American life, ownership is normally evidence of successful mastery of certain techniques, procedures, habits and values. It is a result, not a cause. Giving a man a title to land, whether it be in trust or a patent in fee, teaches him nothing. The rationalization behind this policy is so obviously false that it could not have prevailed for so long a time if not supported by the avid demand of others for Indian lands. This was a way of getting them, usually at bargain prices. The unallotted lands were declared surplus and sold, and the Indian in nearly all cases got his fee patent and sold his allotment.

On April 14, 1915, the Board of Indian Commissioners sent to Secretary Franklin K. Lane a most informative report by Frederick H. Abbott on The Administration of Indian Affairs in Canada.[10] In this report Abbott compares Canadian Indian policy with that of the United States. There was much that we could have copied then that was not effected for many years.

He discovered that in Canada there was a secure Indian policy greatly aided by an indefinite tenure of office for the head of the Indian Department with positions in the career service for agency employees. In the year 19 there was not one transfer in the field service of Canada.[11]

By comparison, United States Indian policy had been found to vacillate continually "changing with each new administration and almost from year to year." Approximately fifty per cent of the field service in the United States was found to be transferred annually.[12] Loring B. Priest in his

study of Indian allotment charges that "misapplication by administrators rather than the evil intent of legislators was responsible for the disastrous history of America's first systematic effort to provide for Indian welfare."[13]

Mr. Abbott closes his report with specific recommendations, some of which are still worthy of consideration forty odd years later:[14]

1. The brief and simple Indian Act of Canada furnishes a form and plan suitable for a consolidated Indian Act adapted to customs, usages and laws in the United States.

2. A law, similar to Canada's, should be enacted defining an Indian.

3. While it is too late to adopt the "closed reserve" policy in the United States, we should slow up in the allotment of our unalloted reservations and make beneficial use a condition to making further allotments, following the practice of Canada in granting "locations" to her Indians.

4. The condition of the half-breeds in Canada, if we had no similar examples in this country, should be a warning against too early removal of restrictions from the lands of Indians in the United States.

5. The Canadian plan of cooperation between the government and the churches in the education and christianizing of Indians and the use of government funds to pay for their education and support in denominational schools and to pay part or all the salary of nurses employed in church hospitals which treat Indians is worthy of serious consideration in this country.

6. The exercise of magisterial authority by Indian agents in Canada is one of the main reasons for the efficiency of administration on its Indian reserves. Similar jurisdiction should be conferred by Congress on Indian superintendents in the United States.

7. The definite judicial procedure for the punishment of offenses on Indian reservations in Canada suggests a proper substitute for the anomalous, incomplete, unregulated, and irresponsible judicial procedure of the so-called courts of Indian offenses on unallotted Indian reservations in the United States.

8. The Indian liquor laws in Canada and methods of administering them furnish models which should be adopted by our government.

9. The File Hills colony for ex-pupils embodies ideal methods of dealing with returned students which are practicable to adopt on many reservations in the United States.

10. The simple, liberal and localized plan of supervising the business affairs of Indians in Canada could be adopted to advantage here.

11. The system of supervising the Indian cattle industry in Canada, especially the system of the Blackfoot reserve, is an ideal one for the reservations of this country and superior to any plan so far developed here.

12. The fact that not a single transfer was made last year in the agency service of Canada is full of eloquent suggestion to those charged with the administration of Indian affairs in this country, where approximately 50 per cent of the service is transferred annually.

Enfranchisement, which was similar to citizenship, allotment, and granting of patents in the United States, was permitted; but at the same time the Indian Act provided for the municipal government of bands by their chiefs and councilors, who were empowered to pass rules, subject to confirmation by the governor in council. The consent of the band was required for the expenditure of capital moneys. Once enfranchised, Indians and their unmarried minor children ceased in every respect to be Indians and thereby lost all privileges extended to Indians under the Indian Act or under "any other Act or law."[15]

In the United States during the 1920's, even before the extension of citizenship to all Indians, there was an effort on the part of Secretary Work and Commissioner Burke to transfer the education, health, and welfare functions of the bureau to the various states having significant Indian populations. The following letter was written to the states of Arizona, California, Idaho, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming inviting their cooperation and suggestions:[16]

Department of the Interior,
November 17, 1923,

May I ask your attention to the matter of reaching a better understanding and cooperation between the States having Indian populations and the Federal administration of Indian affairs?

As generally known the long-standing policy of the Government has been to prepare the Indians for citizenship and to give

them protection while doing so. In this process prominer has been given to the education of their children, to the improvement of their health and home conditions, and to the conservation of their property, including practical guidance in making the best use of it. It will hardly be denied that results within the last two or three decades have been encouraging. The Indians have steadily increase in population. They now understand and observe better thar ever the laws of health. As a rule they are willing to have their children in school and nearly as many of them now attend public school as are enrolled in all others. Their agricultural activities and property holdings have greatly increased. They have learned much from growing contact with white settlements, and their patriotism and loyalty to the principles of our national system are strikingly manifest as compared with earlier periods. Approximately two-thirds of the Indians have received allotments of land and are citizens, and nearly two-fifths of all have received full title to their lands. Outside of Oklahoma, where about 80,000 are released from Federal jurisdiction, at least 20 States have Indian populations sufficient to constitute pronounced factors of social, industrial, and economic importance.

Much could be added to indicate the localizing trend of Indian affairs and the need of friendly cooperation between State and Federal Governments preparatory to surrendering to the former the problems and progress of the Indians. It will be admitted that the aboriginal Americans are a fixture in our population and will largely remain in the States where their interests are located. It may be assumed that every State wants a high type of citizenship and that an unhealthy, ignorant, pauper element of considerable proportions is a credit to no State. Until the Indian is fully competent to handle his own property it must be guarded and conserved for him by the United States. But sound public policy would seem to demand that States and Nation alike do all in their power to shorten the period of dependency and to hasten the period of complete competency, and it is my belief that the best interests of all concerned will be served by a closer cooperation between State and Federal Governments.

In some States white sentiment favors the sale of tribal lands and the distribution of the proceeds among the Indians, as well as a more liberal policy of issuing to them patents in fee. Experience, however, shows that per capita payments are too quickly dissipated with but little permanent benefit, and that fee patent titles carrying full citizenship pass too readily to white men for inadequate

consideration, leaving the emancipated Indians often in a deplorable condition, with the States in some instances not inclined to assume responsibility for these dependents on the theory that they should be cared for by the Federal Government. But such Indians have become identified with the State where their moneys were expended and the realty they held is taxed, and it would seem that the State should not defer its interest in them to the arrival of these conditions, but should cooperate now in a policy of conserving individual and tribal property not only for the benefit of prospective Indian citizens but for the public welfare of the State itself.

A like interest may be wisely sought in the promotion of the Indian's health and education, since the elimination of disease and illiteracy is so essential to individual and collective efficiency, and local effort should be available for his educational, industrial, and social advancement. The Indian must continue to support himself largely by farming and States are well equipped through associations and county agents to extend his agricultural training and otherwise to further a broader community development in which equal school privileges and more healthful home life shall prevail. Obviously the States having considerable Indian populations should be especially concerned in their becoming a thrifty, intelligent, law-abiding component, and it is hoped that we may reach through you a line of coordinate action upon important features of Indian welfare.

You are, of course, familiar with Indian conditions as related to the prominent interests of your State and without offering a definite plan at this time, I will appreciate any suggestions that you may care to make looking to cooperation along the lines herein indicated or otherwise. It will be a pleasure to have you call at the department for personal consideration of the general subject here presented.

Very truly yours,

Chas. H. Burke,
Commissioner.

Several bills having in mind this transfer of responsibility from the nation to states and counties were introduced in the sixty-ninth, seventieth, and seventy-first Congresses (1925 to 1931);but none were passed. [17]

It is interesting to observe the position of John Collier in relation to this transfer of responsibility in 1927 when he was executive secretary of

the American Indian Defense Association. The following statements embody his "Way out for Indians:"[18]

> Abolish the guardianship of the United States over the Indian person. It is a survival from times when the Indians were enemies or prisoners confined under martial law on reservations serving as prison compounds.
>
> Preserve the Federal guardianship over Indian property, individual and tribal. Regulate that guardianship by statute; make it accountable to the courts; provide for its termination, whether for tribes or individuals, in the discretion of the federal court or through action by Congress after recommendation by the court. So amend the allotment law and other laws, as to permit joint or corporate landholdings and industrial enterprise by partnerships or tribes. Modern credit facilities to be extended to Indians; property and earning capacity, on initiative of the Indian borrowers, and after approval by the property guardian subject to court review, to be hypothecable against the loans. The spurious reimbursable indebtedness to be remitted through act of Congress.
>
> Comprehensive Federal court jurisdiction to be established over civil and criminal matters on reservations; the court to be empowered in its discretion to recognize tribal custom and authority in matters internal to the tribes.
>
> Transfer, with minor exceptions, all responsibility for Indian health work, education, social service, agricultural guidance and welfare to the states; the federal appropriations of tax-raised funds and Indian trust funds for these uses to be transferred to the states under contracts and to be supplemented through state appropriations.

It is also interesting to observe him in action before the Senate Indian Affairs Committee on the bills to appropriate funds for the care and relief of Indians through public agencies of California, Wisconsin, and Montana. There was continuous friction between Collier and Commissioner Burke.[19]

On June 12, 1926, Secretary Work requested the Institute of Government Research to conduct a comprehensive survey of the whole field of Indian affairs. The institute consented, and funds for the survey were provided by John D. Rockefeller, Jr. The survey group consisting of ten specialists visited ninety-five jurisdictions and submitted its report in 1928.[20]

Also, under a Senate Resolution of February 1, 1928, the Senate Indian Affairs Committee was authorized to make a survey of conditions among the Indians of the United States. The first hearings under that resolution were held November 12, 13, and 16, 1928, at Yakima, Washington,

and Klamath Falls, Oregon. They were to continue until August, 1943 and be published in forty-one parts and 23,069 printed pages.[21] A supplementary report, written in 1944, proposed the outline of a "long range program for the gradual liquidation of the Bureau of Indian Affairs."[22]

Much had occurred in the sixteen-year period that the Senate survey spanned, and the Meriam report influenced many of the occurrences. It was assumed in that report that the majority of the Indians would want to become a part of the prevailing civilization. It was, therefore, further assumed that the main object of Indian policy should be to fit that majority to take their place in the culture of which they were already rapidly becoming a part.[23]

Consideration was also given, however, to the fact that some Indians had no desire to become as the white man. In regard to these it was suggested that they be enabled "to live in the presence of the [prevailing] civilization at least in accordance with a minimum standard of health and decency." It was pointed out that the economic foundation upon which Indian culture had rested was then largely destroyed and could not be replaced. Because of this it was not practical either to attempt to go back to a situation that had been or to remain in a static condition (the "glass case" idea).[24]

In the Meriam report the point is made again and again that the role of the Indian Service should be educational in the broadest sense. By this they did not refer to formal schooling particularly, but were trying to convey the idea that everything the service did for or with the Indians as groups or individuals should be for their experience and should, therefore, educate them toward a more independent role.

In relation to the role of the nation and the states the report poses the following questions for statesmen on the appropriate level of government to solve:[25]

1. What constructive social services are necessary to develop the Indians to the level of self-support according to a reasonable minimum standard?
2. How can this necessary service best be rendered?
   a. By the national government?
   b. By the state and local governments?
   c. By private agencies, cooperating with the government agencies?
   d. By a cooperative program worked out jointly by the national, state, and local authorities, with or without the cooperation of private agencies?
3. How can the costs of the necessary work be best apportioned between the state and local governments?
4. What part, if any, of these costs can be assessed against the Indians with due recognition of the value of benefits and due consideration of their capacity to pay?

5. If the Indians are to pay any of the costs, what form of taxation is best adapted to meet the special economic and social conditions of the Indians?

I hazard a long but meaningful quote that contains the principles arrived at in the Meriam report with respect to the division of authority between the national and state and local governments:[26]

> 1. That under the Constitution of the United States and in accordance with the historical development of the country, the function of providing for the Indians is the responsibility of the national government.
>
> 2. That the national government should not transfer activities incident to this function to individual states unless and until a particular state is prepared to conduct that activity in accordance with standards at least as high as those adopted by the national government.
>
> 3. That the transfer of activities from the national government to the state government should not be made wholesale, but one activity at a time, as the willingness and ability of the state justify.
>
> 4. That no great effort should be made toward uniformity in the treatment of all the states, as the question of the willingness and ability of the states is an individual one, with very different answers for different states.
>
> 5. That when a state assumes responsibility for a particular activity, as in the case of admitting the children of non-taxed Indians to public schools or providing for non-taxed Indians in hospitals, it is eminently proper that the national government should make contributions to the cost in the form of payments for tuition or hospital fees, and that so long as national funds are thus used the national government is under obligation to maintain officials such as the day school inspectors, to cooperate in the work done by the states to see that it is up to the required standard and that the Indians for whom the national government is primarily responsible are receiving agreed service.
>
> 6. That the national government is under no legal or moral obligation to make the real property of the Indians subject to the regular state and county taxes until such time as the Indians are prepared to maintain themselves in the presence of white civilization and the states are prepared to render full governmental service to the Indians

according to standards which will protect them from neglect and retrogression.

7. That it is in general highly desirable that the states should as rapidly as possible assume responsibility for the administration of activities which they can effectively perform alike for whites and for the Indians with a single organization, with the exception of activities that are directly concerned with Indian property. Experience tends to demonstrate that national control and supervision of property must be about the last of the activities transferred to the states.

To avoid any possibility of misunderstanding regarding the position taken with respect to the taxation of Indians, it should be clearly stated that it is regarded as highly desirable that the Indians be educated to pay taxes and to assume all the responsibilities of citizenship. The survey staff by no means advocates the permanent existence of any body of tax exempt citizens or a policy of indefinitely doing for people what they should be trained to do for themselves. The matter of taxation, however, like other problems in the Indian Service, should be approached from the educational standpoint. In the first lessons in taxation the relationship between the tax and the benefit derived from it by the Indians should be direct and obvious. The form of the tax should be one that has real regard for the capacity of the Indian to pay. The old general property tax has many defects as a system for well established white communities; it is often ruinous as a first lesson in taxation for an Indian just stepping from the status of an incompetent ward of the government to one of full competency. His chief asset is land which bears the full brunt of his tax, and he has relatively small income from which to meet it. An income tax would be far better for the Indian just emerging from the status of incompetency than the general property tax. What is advocated, is not that the Indian be exempt from taxation, but that he be taxed in a way that does not submerge him.

A few words should also be added to prevent misunderstanding with respect to the position taken in the matter of cooperation with the states. Such cooperation is highly desirable. Ultimately most of the Indians will merge with the other citizens and will secure governmental service mainly from the state and local governments. The sooner the states and counties can

be brought to the point where they will render this service and the Indians to the point where they will look to the government of the community in which they live, the better; but the national government must direct and guide the transition. It must not withdraw until the transition has been completely effected; otherwise the Indians will fall between two stools.

In the ensuing section of this report, the survey staff recommends the establishment in the Indian Service of a professional and technical Division of Planning and Development free from immediate administrative duties. One of the great services such a division can render is to aid in developing effective cooperative programs with the different states, adapted to the local conditions. The time is apparently ripe for marked advances in this direction.

It is interesting how familiarly certain parts of the above quotation ring after thirty years. Many of the recommendations are as appropriate today as they were in 1928.

On December 19, 1929, Secretary Wilbur transmitted to the Chairman of both the Senate and the House Committees on Indian Affairs four memoranda prepared by Commissioner Rhoads. Undoubtedly, these were influenced by the Meriam report. They called for a broad approach that would enable the Bureau of Indian Affairs to develop clear and understandable policies on the questions of Indian property, Indian claims, Indian irrigation, and the allotment question.[27]

The appointment of Rhoads and Scattergood as commissioner and assistant commissioner had been hailed as a great victory for Indian reform. Both were men of principal and of substantial means, with good records as friends of the Indian. Much of what occurred under Collier had been suggested and anticipated in the previous administration, but Rhoads was unable to secure the necessary legislation to accomplish the program outlined. The problem of reimbursable debts was solved by the Leavitt Act of 1932, which relieved Indians from tremendous costs for construction of irrigation and other projects, many of which they had not requested and from which they had received little benefit.[28]

It was in health, education, and related fields that Rhoads and Scattergood made their greatest contribution. With more generous appropriations definite improvements were made in personnel, both as to quantity and higher standards of quality. There was an increased federal-state cooperation in the fields having to do with Indian health, education, and welfare, with the Indians, in many cases, receiving the advantage of the use of state and local facilities. Real progress had been made in the transition from the traditional Indian boarding schools to public and day schools.[29]

In the words of John Collier let us summarize "the conclusion to which all of the 12 years (1922 through 1933) of consultation, research, and practical effort tended. Largely, these results have become verbalized into official utterances before the end of the Herbert Hoover presidency and the Wilbur-Rhoads-Scattergood Indian Administration, 1929-1933:"[30]

> 1. The new Indian policy must be built around the group-dynamic potentials of Indian life. This meant an ending of the epoch of forced atomization, cultural prescription, and administrative absolution, and an affirmative experimental search for the power abiding within Indians, waiting for release through the enfranchisement or the recreation of Indian grouphood.
>
> 2. The monolithic Federal-Indian administration with stereotyped programs for all Indians everywhere, must be changed over to become flexibly adapted and evolving administration, fitted to the cultural, economic, geographic and other diversities of the Indians, which the generations of the steam roller had not been able to flatten out.
>
> 3. In place of an Indian Bureau monopoly of Indian Affairs, there must be sought a cumulative involvement of all agencies of helpfulness, Federal, state, local and unofficial; but the method must not be that of simply dismembering the Indian Service, but rather of transforming it into a technical servicing agency and a co-ordinating, evaluating, and, with limitations, regulatory agency.
>
> 4. Finally, and most difficult to state in a few words, the conclusion emerged, that the bilateral, contractual relationship between the government and the tribes (the historical, legal and moral foundation of the Government-Indian relations) must no longer be merely ignored and in action thrust aside and replaced by unilateral policy-making. Rather, instrumentalities must be revived, or newly invented, to enable the bilateral relationship to evolve into modern practicable forms--forms through which the "group-life-space" of the tribes could shift from the exclusively governmental orientation toward an orientation to the American commonwealth in its fullness. I state this last conclusion rather ponderously and abstractly; but at the very core of the Indian Reorganization Act, precisely, is the revival, and the new creation of, means through which the Government and the tribes reciprocally, mutually, and also experimentally, can develop the Federal-Indian relation, and the Indian relation to all the rest of the

Commonwealth, on into the present and future.

It has been suggested by some that the Indian Reorganization Act was a definite change in policy. Trying to think in terms of those who were considering the Wheeler-Howard bill during the months prior to its passage in June, 1934, it seems to me that the Indian Reorganization Act was an attempt to crystallize into law what had been discussed in the twelve previous years. This is the way I interpret Collier's quotation above.

In the hearings on the bill Collier made a specific point of the fact that the Bureau should continue to work with other federal agencies and with state and local governments to achieve the best possible solutions to specific problems of specific Indian groups.[31] The Johnson-O'Malley Act, also passed in 1934, allowing contractual arrangements between the federal and state and local governments in relation to education, health, agricultural assistance, and welfare, was as much a part of Collier's program as the Indian Reorganization Act.[32]

The Indian Reorganization Act has been referred to as a reversion, an attempt to turn back the clock. In reference to this D'Arcy McNickle, an associate in the Collier administration, states:[33]

> Time cannot be reversed--if there were any desire to reverse the trend of the years. The policy underlying the Indian Reorganization Act is not a policy of reverting to a prior condition of things. To assert the right of self-government is to assert the right of the future. To assert the right of the Indians, the First Comers, to set up councils of their own choice, to provide for orderliness, to raise and expend funds for public purposes, is to assert the rights of a board of county commissioners, a city council. This and nothing more, is the purpose of the Indian Reorganization Act.

As stated so well in William H. Kelley's Foreword to the examination of the Indian Reorganization Act--after twenty years:[34]

> It must be kept in mind that no one has ever argued for the indefinite retention of Federal supervision of Indian affairs, or for the preservation or perpetuation of unchanged Indian cultures. The question has always revolved around the methods of Indian-white adjustment and the influence of these methods upon the stability, the health, and the happiness of the Indian population.
>
> Tendencies to oppose all or part of the Indian Reorganization Act stem from the belief that acculturation will be speeded, and the Indians better off in the long run, by the removal of special services, and special Federal agencies. Tendencies

> to favor the retention of the Indian Reorganization Act stem from the belief that acculturation will be speeded, and better Indians produced, by the retention of special services, privileges, and rights until the reason for these no longer exists, that is, until the Indians are economically secure and adequately trained for life in white communities and until they have come to share the values and the understandings of the American cultural system.

John Collier strongly championed the role of the Indian community in bringing about the transition from one culture to another. Again I risk a long quote to give you Collier's own ideas in relation to this:[35]

> I might begin by saying that I conceive the broad function of Indian policy and Indian administration to be the development of Indian democracy and equality within the framework of American and world democracy. But I hasten to add that we--Indian Service and Indians together--can and ought to seek this goal consciously, positively, by an effort of will. We can--within limits--"plan" it that way. That is why the Indian Office has--and will have--a continuing responsibility. Recent world history has shown that democracy can neither arise nor exist through drift; freedom is a conscious striving, a thing that must be fought for and held step by step.
>
> The most significant clue to achieving full Indian democracy, within and as a part of American democracy, is the continued survival, through all historical change and disaster, of the Indian tribal group, both as a real entity and a legal entity. I suspect that the reason we do not always give this fact the recognition it deserves is that we do not want to recognize it. Indian "tribalism" seems to be foreign to our American way of life. It seems to block individual development. We do not know how to deal with it. Consciously or unconsciously, we ignore it or try to eliminate it. Remove the tribe, rehabilitate the individual, and our problem is solved--so runs our instinctive thinking.
>
> I remind you that this was precisely the philosophy of Indian administration over many years--in fact, until very recent years. And we know how little progress Indian administration made across those years. In fact, reversing a famous phrase, we might say that through that long and tragic history, rarely have so few owed so little to so many.

Yet, in spite of this persistent effort of uprooting and destruction, "tribalism" has persisted as a matter of both law and historical fact. The range and variety of tribalism are very broad. At one extreme, the tribe is the boundary of the individual's horizon. At the other, there are tribes which exist in name only, in which membership is a nominal record on an agency book. But at either extreme, we know enough of the binding forces of social cohesion to know that the tribe is a reality that can be used by and for the Indians and by and for democracy. Even where a tribal group is split into factions where leadership has broken down, where Indians clamor to distribute the tribal property--even there deep forces of cohesion persist and can be evoked.

Even if we choose to ignore this fact of social biology, we cannot ignore three centuries of legal dealing with Indians. We can discard everything else if we wish, and think of the tribe merely as a fact of law. At the minimum, the tribe is a legally recognized holding corporation--a holder of property and a holder of tangible privileges which as a non-member he could not have. Through court decision--many of them Supreme Court decisions--an important body of legal doctrine has grown up about the concept of tribal entity. This fact of law is an enormously important, persistent, stubborn, living reality, which neither you nor I nor the Indians nor Congress nor the Supreme Court can destroy. It is there to give the lie to all shallow and superficial efforts to 'solve' the Indian 'problem' by ignoring its existence.

Now this fact of law was greatly clarified and strengthened by the Indian Reorganization Act, which converted the tribe from a static to a dynamic concept. Congress, through the IRA, invoked the tribe as a democratic operational mechanism. It reaffirmed the powers inherent in Indian tribes and set these powers to work for modern community development. In doing so, Congress recognized that most Indians were excluded from local civic government and that no human beings can prosper or even survive in a vacuum. If we strip the word "tribe" of its primitive and atavistic connotations, and consider tribe merely as primary or somewhat localized human groupings, we can see the Indian tribal government, for most Indians, is the only presently feasible type of local civic self-government they can share in and use for their advancement. For, as a matter of fact, the tribes, historically, were

segregated by groups, and most of them are today living as groups. If we think of the tribes as communities and of tribal self-government as local civic government, in the modern democratic sense, we can divest ourselves of the lingering fear that "tribalism" is a regression and can look upon it as the most important single step in assimilating Indians to modern democratic life.

Again, not being a prophet, I cannot predict how long tribal government will endure. I imagine it will be very variable in duration. I can imagine some tribes will remain cohesive social units for a very long time; others will more or less rapidly diffuse themselves among the rest of the population. It is not our policy to force this issue. Indians have the right of self-determination, and cultural diversity is by no means inimical to national unity, as the magnificent war effort of the Indian proves. But if we do not force the issue of assimilation, neither are we passively neutral as to the maintenance of Indian values. For we know and Indians know that Indian values are real and persistent and viable. And we know that if history means anything it means both a struggle for freedom and a struggle to preserve achieved values against the disintegrating forces of time and change. We believe, in short, that Indians can maintain their old proved values while selectively absorbing new values from the modern world.

During this transitional period (however, short or long it may prove to be) the Federal Government is forced by the fact of law and the fact of self-interest to continue to give a friendly guiding and protective hand to Indian advancement. As to law: there is a large body of treaties and statutes to be interpreted and enforced; Indian property must continue to be protected against unfair practices by the dominant group; Indians must be assisted in attaining self-sustinence and full citizenship. As to government self-interest: Indians are the only oppressed racial minority group that has the protection of an adequately organized system of government amelioration. The complete withdrawal of this protection would merely substitute a more difficult problem in place of one that is on the way to a solution. It would create a permanently dispossessed and impoverished group that would either have to live on the dole or would become one more sore spot in the body politic.

But the government's relationship to Indians is itself in transition. The Indian Reorganization Act made that

inevitable. The Indian Office is moving from guardian to advisor, from administrator to friend-in-court. In this transition, many powers hitherto exercised by the Indian Service have been transferred to the organized tribes; many more such powers will be transferred. As Indians advance in self-government, they will begin to provide many of their own technical and social services, or will depend more and more on the services ordinarily provided in American communities. I think we can agree, however, that federal advisory "supervision" ought not to be withdrawn until Indians have attained a fair political, economic and cultural equality equivalent to that guaranteed by the Four Freedoms.

> The end result of this progression and the precise steps and means by which it will unfold I cannot predict, and no one else can predict. History does not repeat itself, and the future is inscrutable. I am sure of one thing only, that the progression will be highly variable, both as to time, methods, and results. Historical process, composed of an infinity of variables, cannot be confined within the framework of a neat formula, and those who fall back on such formulas as a "solution" of the Indian problem, are merely trying an easy escape from tough realities. And beyond this certainty, I am also confident that if we and our successors continue to work wisely and humanly with the Indians, they will cease to be a "problem" and will become complete functional citizens of our American order, bringing great and original gifts to it.

An appraisal of the restoration of Indian community life under IRA is included under the heading "Things That Have Worked" in the Hoover task force report on Indian affairs:[36]

> A third experience that is encouraging is the effort under the Indian Reorganization Act to establish self-government among the Indians. The Act marked the end of the attack on Indian institutions. To attempt to revive ancient institutions, in the 20th century, if there was such an effort, was a mistake, as has been noted. But the end of cultural hostilities and the effort to establish self-government in tribal or village communities have been all to the good. Not a little of the machinery of government is creaking. Some of its design is perhaps more influenced by the past than by present problems, and should be scrapped for later models, but there can be no doubt about the soundness of applying the principle of self-government to Indian problems.

> Indian leadership is developing. Indian people are analyzing their problems, and assessing their condition in a realistic way that is very promising. Some of them see very clearly that they can do more for themselves, with very reasonable assistance, than Uncle Sam would or could do for them. The dividends from this investment in self-government are just beginning to come in, and there are some real weaknesses in the system as it stands, but Indian self-government is clearly a potent instrument if wisely used.

I think it is fair to say that only a complete change in administration and the period of grave national emergency resulting from the depression, with its "underspread disappointment with the economic aspects of modern civilization"[37] made the passage of the Indian Reorganization Act possible. Secretary Ickes worked closely with Collier, and President Roosevelt intervened with Congress on behalf of the bill.[38] The first few years of the first Roosevelt administration were a period of trying new approaches during which Congress worked closely with the executive branch of government. By the beginning of the next administration, however, the honeymoon was over.

By the end of 1937, the Senate survey of Indian affairs which began in 1928 was largely completed. It left an exceedingly bad taste in the mouths of the "surveyors." In January and February of 1937, six bills were introduced in Congress that would have limited or abolished the Indian Reorganization Act: (1) Senator McCarran's bill would have abolished the IRA for all of Nevada's Indians, (2) Senator Murray's bill sought to repeal the effect of the IRA in Montana, (3) Senator Chavez' bill sought to forbid the Navajo tribe from ever taking refuge in IRA, (4) Representative McGroarty's bill would repeal the act in California, (5) Representative O'Malley's bill would repeal that section of the IRA giving preference to Indian employment in the Indian Service, and (6) Senators Wheeler and Frazier introduced a bill to abolish the IRA completely.[39]

The early opposition came from two main sources: persons interested in the property reserved to the Indians by the IRA and persons, including friends of the Indian groups, who saw in the IRA encouragement of communistic tendencies inherent in Indian culture, as well as antireligious elements related to extension of freedom of religion, including Indian religion, to Indian groups.[40] The opposition was to continue and broaden in scope.

The last eight years of Collier's administration were a continuing contest between Collier and the House and Senate Indian committees. This pressure made it difficult for the Bureau of Indian Affairs, under Collier, to develop the IRA to its full potential. Collier, under attack, found it difficult to be objective. The IRA became his program, and he did not hesitate to champion it. The war years resulted in curtailed funds and the removal of the Bureau from Washington, D. C., to Chicago.[41] Throughout the twelve years of the Collier Indian administration, however, events were occurring that would profoundly affect Indian life. It is likely that in many cases the mere fact that the IRA had been able to happen, plus the brief experience under it, were all to the good.

During the prewar years through the CCC, the WPA, and other related work relief programs, the level of Indian income was raised; and individual Indians received valuable practical training in the operation and maintenance of tractors, bull dozers, and road building equipment; in the building trades, in soil and resources conservation work; and in other programs that served the non-Indian as well as the Indian population.[42]

All of this was something of a preparation for the approximately 70,000 men and women who left the reservations during World War II to take their place in the armed services or to find employment in war industries. The educational value of this period of rubbing shoulders as equals with the non-Indian population at large and of using the same health, education, welfare, and employment services as other citizens cannot be measured; but I believe that because of it the Indian people took a great step forward. The IRA with its antecedents helped prepare them to take this step.[43]

In 1944, the Senate Indian Affairs Committee proposed a "long range program for the gradual liquidation of the Bureau of Indian Affairs" and the House began their own investigation of the Bureau.[44] In 1945, John Collier resigned. Examined in retrospect the twelve-year period that he was commissioner, I am sure, will prove to be a period of progress toward a condition among Indians that will better enable them to manage their own affairs without special protection from the federal government.

FOOTNOTES FOR CHAPTER I

[1]Felix S. Cohen, Handbook of Federal Indian Law (Washington, 1945), 206.

[2]Charles J. Kappler, Indian Affairs Laws and Treaties, Vol. II. (Washington, 1904), pp. 612, 663.

[3]Sister Mary Antonio Johnston, "Indian Reform Movements Favoring Allotments," Federal Relations with the Great Sioux Indians of South Dakota, 1887-1933 (Washington, 1948), pp. 44-75.

[4]Congressional Record, Vol. II, Pt. I, pp. 905-906, 46th Congress, 3 Sess., (1881).

[5]D'Arcy McNickle, "Indian and European: Indian-White Relations from Discovery to 1887," The Annals, Vol. 311 (May, 1957), 11.

[6]Solicitor's Office, Interior, Federal Indian Law (Washington, 1958), 248.

[7]Messages and Papers of the President, Vol. XV, p. 6672.

[8]Federal Indian Law, p. 255.

[9]"Report of the Committee on Indian Affairs to the Commission on Organization of the Executive Branch of the Government," Charles J. Rhoads, John R. Nichols, Gilbert Darlington, George A. Graham, Chairman, October 1948 (unpublished manuscript), pp. 15-16.

[10]Frederick H. Abbott, The Administration of Indian Affairs in Canada (Washington, 1915).

[11]Ibid. pp. 20, 21.

[12]Ibid. p. 89.

[13]Loring B. Priest, Uncle Sam's Stepchildren (New Brunswick, 1942), p. 252.

[14]Abbott, op. cit., pp. 88-89.

[15]Ibid. pp. 91-95.

[16]68th Congress, 1st Sess., (1924), House Doc. 149, The Indian Problem, pp. 48-49.

[17]See respective Annual Report of Commissioner of Indian Affairs for each particular year.

[18]Robert Gessner, Massacre (New York, 1931), 406-407.

[19]U.S. Senate, Indian Affairs Committee. Hearings, Funds Appropriated for Care and Relief of Indians Shall Be Expended Through Certain Public Agencies of California, Wisconsin, and Montana, on S. 3020, S. 3611, and S. 5498. 69th Congress, 2d Sess., Feb. 10, 1927.

[20]Institute for Government Research, Lewis Meriam, ed. The Problem of Indian Administration (Baltimore, 1928).

[21]70th Congress, 2d Sess., Survey of Conditions of the Indians in the United States (1928-1943), pts. 1-41.

[22]78th Congress, 2d Sess., Report 310, Part 2, Survey of Conditions Among the Indians of the United States - Supplemental Report, May 2, 1944.

[23]The Problem of Indian Administration, pp. 86-89.

[24]Ibid. p. 87.

[25]Ibid. p. 97.

[26]Ibid. pp. 98-100.

[27]Annual Report, Board of Indian Commissioners, 1930, pp. 15-16.

[28]Alice Virginia Waldecker, "Conclusion," from Administrative and Legislative Reforms in American Indian Relations, 1928-1934 (unpublished master's thesis, Smith College, 1945), pp. 113-120.

[29]Ibid. p. 114.

[30]Collier, John, "The Genesis and Philosophy of the Indian Reorganization Act," taken from William H. Kelley, ed., Indian Affairs and the Indian Reorganization Act: The Twenty Year Record, (Symposium, 52nd Annual Meeting, American Anthropological Association, Tucson, Arizona, December 30, 1953), pp. 4-5.

[31]U.S. Senate, Indian Affairs Committee, Hearings, To Grant to Indians Living Under Federal Tutelage Freedom to Organize for Purposes of Local Self Government, on S. 2755, 73d Congress, 2d Sess., Feb. 27 and Apr. 26 - May 17, 1934. 2 pts.

[32]Collier, loc. cit., pp. 1-2.

[33]D'Arcy McNickle, They Came Here First (New York, 1949), pp. 298-299.

[34]Kelley, op. cit., from Foreword.

[35]Commissioner's Circular No. 3537 (November 15, 1943), pp. 1-2.

[36]"Report of the Committee on Indian Affairs," (Hoover Commission), pp. 72-73.

[37]Ibid. p. 27.

[38]John Leiper Freeman, Jr., The New Deal for Indians: A Study in Bureau-Committee Relations in American Government (unpublished dissertation, Princeton University, 1952), p. 470.

[39]Collier Letter, March 4, 1937.

[40]U.S. House of Representatives, Committee on Indian Affairs, Hearings, Wheeler-Howard Act - Exempt Certain Indians, on S. 2103, 76th Congress, 3d Sess., June 10, 11, 12, 13, 14, 17, 18, 19, and 20, 1940.

[41]Freeman, op. cit., p. 468.

[42]"Report of the Committee on Indian Affairs," (Hoover Commission), pp. 27-28.

[43]Survey of Conditions Among the Indians of the United States - Supplemental Report, May 2, 1944.

[44]U.S. House of Representatives, Indian Affairs Committee, Hearings, Investigate Indian Affairs (to determine whether changed status of Indian requires revision of laws and regulations affecting American Indians), pursuant to H. Res. 166, 78th Congress, 2d Sess., July 22 - Dec. 13, pts. 3 and 4.

THE RECENT BACKGROUND TO TERMINATION LEGISLATION

In his report for 1933, John Collier stated:[1]

> A decentralizing of administrative routine must be progressively attempted. The special functions of Indian Service must be integrated with one another and with Indian life, in terms of local areas and of local groups of Indians. An enlarged responsibility must be vested in the superintendents of reservations and beyond them, or concurrently, in the Indians themselves. This reorganization is in part dependent on the revision of the land allotment system; and in part it is dependent on the steady development of cooperative relations between the Indian Service as a Federal agency, on the one hand, and the States, counties, school districts, and other local units of government on the other hand.

In 1940 Assistant Commissioner McCaskill summed up the trend in Indian administration under Collier in a paper entitled "The Cessation of Monopolistic Control of Indians by the Indian Office," with the following statement:[2]

> We see the Indian Office divesting its authority into three directions: first among other Agencies of the Federal Government which have specialized services to render; second among the local state and county governments, which are much more closely associated with the problems in some areas than Washington can be; and finally among the tribal governments which have organized governing bodies, and which expect eventually to take over and manage all of the affairs of the Indians. Perhaps thus, but not at once, it may be found possible to cease special treatment, special protective and beneficial legislation for the Indians, and they shall become self-supporting, self-managing, and self-directing communities within our national citizenry.

On November 15, 1943, Circular Number 3537, addressed to "Superintendents, Tribal Councils, All Indian Service Personnel, and All Indians," signed by John Collier and approved by Assistant Secretary of the Interior, Oscar L. Chapman, was sent out from the Indian Office.[3] This letter was a follow-up on Circular 3514, which called for basic program making for all reservations, and was made the subject matter of a series of regional conferences conducted by A. L. Wathen. The objectives given for undertaking the reservation programs were briefly as follows:

1. An inventory of tribal resources.

2. An appraisal of agency services.

3. An estimate of future tribal needs.

4. A long-term plan for preserving tribal resources and for adapting them to meet tribal needs.

5. A statement outlining how services now rendered by the agency might be perpetuated (a) by other agencies and (b) through the efforts of the Indians themselves.

These objectives should facilitate the Federal Government in dispatching its obligations to the Indians by (a) making it possible for him to attain economic independence by offering him an opportunity to acquire the fundamental necessities of life and (b) by according him political equality by making available to him the privileges enjoyed by other elements of our population.

I quote three paragraphs from the circular letter in full:

In preparing these programs, it is essential to bear in mind that the whole country will probably be faced soon with the necessity of preparing detailed plans for post-war construction as a means of absorbing the shock of changing from a war to a peace economy. Your program of postwar construction should be definitely oriented toward your long-range objectives and should clearly so indicate. If we had had such programs in 1933-35, more funds could have been obtained, and they could have been more effectively used, for Indian resource development.

The program should not, however, stop at the point of economic development. It should include plans for community organization, including community planning. t should carefully reconsider what additional powers might be transferred to the tribes and how best the advisory function of the Indian Service can be strengthened and the supervisory function reduced. It should consider what contributions, if any, Indians should make to the cost of their own social services.

It should also present the facts and needs as to social security and old age assistance. It should consider existing obstacles, if any, to Indians exercising the vote. It should consider what additional services to Indians might be assumed by state, county or municipal agencies, such as law and order, health, and education. And, as to the plan as a whole, assuming it to be adopted and adequately financed, you should seek to answer the question,

"When will the group or tribe affected be in a sufficiently stable position--economic, social, political--to justify reducing federal supervision or even withdrawing it?" I say SEEK to answer because in many cases, we can not begin to answer it; in others, we can make fairly good guesses; in some cases we can answer it and begin to implement the answer.

The programs called for were completed in 1944 as ten-year development programs for each reservation. Some were good. Some were not. They were later to be used as criteria to determine a particular tribe's readiness for termination.

In 1945, during the hearings on the nomination of William A. Brophy to be Commissioner of Indian Affairs, the senators came back again and again to the point that they wanted a commissioner who would carry out the policy laid down by Congress. The following is an example of a typical exchange:[4]

Senator Hatch. Mr. Chairman, may I interrupt just a moment? I think Mr. Brophy has given an answer which is highly interesting to the committee on this particular subject, and I just wondered whether the committee got what he said about following out and administering and carrying on the policies as laid down by Congress.

The Chairman. I was just about to call attention to that.

Senator Hatch. What are your ideas on that, Mr. Brophy?

Mr. Brophy. Well, sir, I have no reservations whatsoever. I think the function and purpose of an official who is in an executive department, no matter what kind of a man he is, is to carry out the law as it is written and the spirit and intent of it.

The Chairman. Would it be your purpose, if you were confirmed as Commissioner of Indian Affairs, to work with Congress and not around Congress?

Mr. Brophy. Well, sir, I look at it--I do not know whether I am right or not--as a sort of partnership when you get right down to it because Congress makes the policies, and they have to be carried out; if an executive does not carry them out, he ought to get fired.

The Chairman. Well, would it be your policy to work with Congress?

Mr. Brophy. Oh, of course. Definitely.

The Chairman. And carry out the congressional policy?

Mr. Brophy. Definitely. I do not think that a man could take the oath and not do it.

There was no question about the senior members of the Senate and House Indian Affairs Committee being happy to be rid of John Collier. Members of Congress cannot help being influenced by local politics and the Indian vote in the past has not tended to be as important as that of other segments of the population. Bill after bill had been introduced in both the Senate and the House during the period from 1937 to 1945, with purposes in mind ranging from removing restrictions on land which could then be acquired by local interests in a particular state to attempt to put the Bureau of Indian Affairs out of business.

After the Senate and House investigations during the sixteen-year period beginning in 1928 and ending in 1944, there were no doubt many congressmen who sincerely believed that the best thing ultimately for the Indian was to get him weaned away from his special status as rapidly as possible. We will recall that the Meriam report, in 1928, suggested that states should "as rapidly as possible" assume the responsibility for administering "activities which they can effectively perform alike for whites and for the Indians with a single organization."[5]

The Collier administration had not moved toward this goal fast enough to satisfy some members of Congress. With a new commissioner, they were determined to try to shape Indian policy toward the goals they had in mind, which had grown out of the extensive investigations referred to above.

In studying the hearings on the Indian Claims Commission bill, it is evident that one of the reasons Congress was willing to consider it favorably was the fact that they saw it as a step in the preparation of the Indians for federal withdrawal.[6] This point had been made in the Meriam report and other investigations carried on from 1920 to 1945.[7]

In Order Number 536, September 17, 1946, from Commissioner Brophy to district directors, superintendents, and Indian tribes and groups, it is stated that the main objectives of the Bureau of Indian Affairs are "the economic and social rehabilitation of the Indian, the organization of Indian tribes so that they may manage their own affairs, and the adaptation of native Indian institutions and culture to modern conditions."[8]

In 1945 and 1946 great effort was spent in a reorganization of the budget system and of the administration hierarchy in the Bureau. The purpose of the reorganization was to simplify legislation and administration and to allow decisions to be made as close to where a problem existed as possible.[9]

Such an administrative approach would make it possible to develop programs suited to a particular reservation or district. In an undated memo found in the central Indian files signed by Mr. Brophy, his philosophy regarding the role of the Indian in the initiation and development of programs is outlined:[10]

> I am more convinced than ever that we must get closer to the people if our programs are to yield the greatest benefit to the Indians and the country. We must constantly strive to have greater participation by the Indians in the initiation, formulation, and execution of our policy and work. I am satisfied that the largest degree of success will be attained only if we do that. There is a tendency in some quarters to think that Indian participation is sufficient if we submit to them completed plans of things to be done so that we get cut and dried decisions. That is not enough. The Indians should be brought into the initiating stages of policy formation and planning. There should be a real sharing of ideas about goals and how to reach them and their views as well as those of the entire staff of the service should be weighed and considered. Our programs, moreover, must be coordinated and integrated with other Interior programs and those of other governmental units as well as those of local civic groups if we are to achieve maximum accomplishment.

It is unfortunate that Mr. Brophy was unable to personally direct the activities of the critical years of 1947 and 1948. The period following World War II is spoken of as "a stormy transition period leading to the development of a policy aimed at the elimination of the B.I.A."[11] By 1950 the basic decisions were made. By 1952 the pattern for action was set.

On February 8, 1947, Assistant Commissioner Zimmerman appeared before the Senate Committee on the Post Office and Civil Service to present testimony on Indian Bureau withdrawal. The formula, having four parts, was devised to measure a tribe's readiness:[12]

> Senator Johnson. What conditions did you use as a measure, so the committee may have the benefit of that?
>
> Mr. Zimmerman. The first one was the degree of acculturation; the second, economic resources and condition of the tribe; third, the willingness of the tribe to be relieved of federal control; and fourth, the willingness of the State to take over.
>
> They are the tests that need to be applied in each case.
>
> As to specific recommendations:

Mr. Zimmerman recommended to the committee that group 1 could be released now from federal supervision; group 2 in 10 years; and group 3, indefinite time.

Group 1

Flathead
Hoopa
Klamath
Menominee
Mission
New York
Osage
Potawatomi
Sacramento
Turtle Mountain (conditionally)

Group 2

Blackfeet
Cherokee
Cheyenne River
Colville (subject to restoration of ceded lands)
Consolidated Chippewa
Crow (special legislation)
Fort Belknap
Fort Peck (irrigation and power)
Fort Totten (no resources)
Grande Ronde (no resources)
Great Lakes (no resources)
Northern Idaho
Quapaw (in part, Wyandotte, Seneca)
Taholah, Tulalip (consolidation, in part)
Tomah
Umatilla
Warm Springs
Wind River (Shoshone only)
Winnebago (Omaha still predominantly full-blood)

Group 3

Cheyenne and Arapaho
Choctaw
Colorado River
Consolidated Ute (claims recoveries)
Crow Creek
Five Tribes (Oklahoma policy and legislation)
Fort Apache
Fort Berthold
Fort Hall
Hopi
Jicarilla (possibly 2)
Kiowa
Mescalero
Navajo
Pawnee
Pima
Pine Ridge
Quapaw (in part)
Red Lake
Rocky Boy
Rosebud
San Carlos
Sells
Seminole
Shawnee
Sisseton
Standing Rock (re State's ability)
Taholah, Tulalip (in part)
Tongue River
Truxton Canon
Uintah and Ouray
United Pueblos (if submarginal lands are added to reservation and if franchise granted, then perhaps in group 2

Group 3 (cont'd)

Western Shoshone
Wind River (Arapaho only)

Yakima

Separate withdrawal bills were presented for the Klamaths, Osage, and Menominee Tribes. In relation to his choice he stated:

> I took these as examples, as specimens, because each of them has substantial assets, each of them has a small degree of tribal control, and each of them has indicated that it wants to assume more control, if not full control, of its tribal assets and its tribal operations.

In a speech before the Home Missions Council of North America, January 6, 1948, William E. Warne, Assistant Secretary, Interior, stated that:[13]

> The avowed objective of the Indian Service of the Department of the Interior through the years has been to work itself out of a job. Within the last year the committees of the Congress which are concerned with Indian Affairs have expressed some doubts whether the controls were being released rapidly enough. To reaffirm this policy of releasing Indians from Government supervision, the Congress made substantial reductions in funds appropriated for this fiscal year for Indian administration at all levels of the service.
>
> . . . . . .
>
> It has been increasingly clear that the Indian field service has been reluctant, perhaps because of imposed regulations, to relinquish control over funds of individual Indians, as rapidly as the increasing competence of Indians should have dictated. One result of the current cut in administrative funds has been that we have had to withdraw much of the supervision of individual funds and individual leasing of land that was formerly exercised by agency officials. The suddenness of this transition will work to the disadvantage of some Indians, but the change as a whole is a move in the right direction.
>
> Wholesale and indiscriminate relinquishment of Federal responsibilities for the protection of Indian property rights is not justifiable, however, and would be dangerous to the Indians.

He went on to discuss law and order:

> The Indian Reorganization Act gave a well-defined place in Indian self-government to the enforcement of law and order.

Tribal councils were recognized as competent to enact regulatory ordinances and fix penalties; tribal courts were reinforced; and the tribes were encouraged to employ law-enforcement officers. Many tribes have established effective local systems of law and order on their reservations. In areas where there is still operating an effective body of tribal lore and custom, this is probably as it should be. There is just as much reason to permit the passage and enforcement of local regulations in an Indian community as in any other American town or community. The Indians because of their peculiar legal status in the national life, derive much of their authority for local self-government by inherent right, as distinguished from cities which are chartered by States, but the powers exercised by the tribes and by cities are similar.

There are many reservations, however, on which Indian customs are no longer strong. The Indians live side by side with non-Indians, and to all intents and purposes are fitting into the general culture pattern. In many of these areas there is no interest on the part of the Indians in setting up and operating a tribal code or tribal courts. Their right to do so is sometimes used as an excuse to interfere with the enforcements of local law upon restricted Indian property. The Indian Office recognizes this situation and has for a decade prepared legislation proposals that would permit State law enforcement agencies to assume the responsibility in many parts of the country. Legislation transferring the responsibility has already been enacted for Kansas and for one reservation in North Dakota. It is our belief that similar legislation should be passed at an early date for the Indians residing in California, Minnesota, Wisconsin, Iowa, and some other States.

After outlining some of the problems in relation to discrimination against Indians in particular localities, he goes on to discuss the possibilities of federal withdrawal from the fields of health, education, welfare, and tribal responsibility for resources. The last two paragraphs indicate that the policy has been pretty well defined:

Finally, I might refer to the testimony given by Acting Commissioner Zimmerman before a committee of the United States Senate last winter in which it was proposed that certain tribes, possessed of resources and already well assimilated, were at the point where Federal supervision could be withdrawn, almost immediately. Other tribes should come to this point in another 10 years, and all tribes should be moving in this direction. All of us in

the Department of the Interior are hopeful that the day is not too far off when we may see the end of our guardianship responsibility with respect to the Indian people. That day will come at different times for different tribes, but everyone will welcome the advent of each such day.

Let us part with two conclusions: First: the Federal Government is not giving things to Indians. Reservation lands always belonged to Indians or were acquired in trade for other lands considered more desirable by the white man. School and health services are either explicit or implicit in most of the early treaties, sometimes in part payment for ceded land, often as a matter of self-protection. Second: that achievement of full assimilation for Indians involves attitudes of mind on the part of the non-Indian group which are beyond the reach of law and regulation. The Department of the Interior is working on these attitudes, and on other requirements of complete assimilation. You, my friends, can spearhead a drive for the needed change in public attitudes.

Early in 1948, Mr. Wathen, who had been placed in charge of programming in the central office, set up a series of conferences with regional offices to work on programs for each reservation.[14] According to instructions from Acting Commissioner Zimmerman, the programs requested by Collier in 1943 and submitted in 1944 were to be used, where possible, as a basis for further programming. The following specific instructions are from Mr. Zimmerman's Circular Number 3675, May 28, 1948:[15]

> What is desired is the assembly in concise form of existing factual data as to the social and economic status of each group or tribe and, after a careful analysis and evaluation of these data, the projection of a comprehensive long-range program. The objective of the program should be the eventual discharge of the Federal government's obligation, legal, moral, or otherwise, and the discontinuance of Federal supervision and control at the earliest possible date compatible with the government's trusteeship responsibility. This may mean the early termination of all Federal supervision for some groups, whereas for others it seems obvious that certain Federal activities, including the development of resources, must be continued for many years.
>
> The programs should be logical and realistic. They should indicate when it might reasonably be expected that each group or tribe will be in a sufficiently stable position both socially and economically to permit the reduction of Federal supervision to a minimum, or its discontinuance entirely. The possibility of having the states assume more

responsibility for such supervision and control as is necessary should be carefully explored. As to some groups or tribes, it is believed the government can and should reduce materially its supervision and service at an early date. As to others it will probably be necessary for the government to exercise some degree of supervision and protection for many years in order to prevent a recurrence of the historical process of the dissipation of Indian lands and other resources.

. . . . . .

Subject to possible change, the following reservations and areas have been selected for the preparation of programs during the remainder of this calendar year: Klamath Falls, Oregon; State of California; State of Minnesota; Pine Ridge Reservation, South Dakota; Fort Berthold Reservation, North Dakota; Standing Rock Reservation, North and South Dakota; Papago Reservation, Arizona; Turtle Mountain Reservation, North Dakota. These were selected because they represent the three different types of program required, namely: (1) Where Federal supervision can be terminated at a reasonably early date; (2) where it may be terminated in perhaps 5 to 10 years providing funds are made available as required to carry out the program; (3) where many years must elapse before the Federal government can discharge its obligation.

In discussing termination with persons who have been with the Bureau ten years or longer, the information has been repeated consistently that from the time Mr. Zimmerman made his report before the Committee on Civil Service in 1947, there has been no change in policy and little change in pace. Any change in pace, it was said, could likely be traced to the appointment of new commissioners, with the necessary lull that occurred in becoming oriented to the new position.[16] Throughout this period public speeches or articles on Indian affairs from the Department of the Interior or the Bureau of Indian Affairs, as well as the official circulars, are burdened with references to withdrawal, transfer of responsibilities to states and local governments, or placing more responsibility upon the tribes themselves. I am able to only sample these for the commission's benefit.

We should be certain to place responsibility for the kind of termination policy that has developed during the last ten years on Congress, where it belongs. Mr. Zimmerman appeared before the Civil Service Committee at their request to present a withdrawal program which would lead to a reduction in Bureau personnel. In the language of an article in the New York Times, the Public Lands Committee of the eightieth Congress (1947) "compelled" the Indian Bureau to give them a classification of tribes with target dates for "freedom from wardship."[17]

Pressure was also developing from states for termination of federal responsibilities. In some cases, as in North Dakota, there were strings attached, with the states wanting the federal government to finance the program while they would administer it. In other cases states were willing to accept responsibility for their Indian population with a minimum of assistance from the nation.

An interesting approach to the problem was taken by Theodore H. Haas, in 1949, when in a speech before the National Congress of American Indians he charged them with the responsibility of helping the Indian Bureau "to work itself out of a job:"[18]

> . . . Show us what functions we should diminish or end, what functions we should increase, if any; what functions we should turn over to the state and local governments, another Federal bureau, or the tribes. Kindly be specific in your advice as to method, time and place, and give us the benefit of your reasons.
>
> I want to cite a few other examples of how you can assist us. We have frequently said that one of the Bureau's objectives is the termination of Federal supervision and control special to Indians, and the progressive transfer of tribal property and tribal enterprises to Indian-owned and controlled Federal corporations. I believe that you have passed resolutions to the same general effect. Yet only two tribes numbering together about 1,000 members, the Stockbridge-Munsee Indians of Wisconsin in 1948, and the Saginaw-Chippewa Indians of Michigan in 1949, have voted under their constitutions and charters to end the supervision of the Department of the Interior over several types of their leases and contracts. Why haven't more Indian tribes--including some of the members of your organization--sought the transfer from the Bureau to them of additional powers over the management of their own community activities? What is the National Congress of American Indians doing in this important administrative field - especially with regard to groups who denounce Bureau domination?

As a matter of interest, because Senator Watkins' name has been closely associated with termination bills, when the Bosone Resolution (which had passed the House) came before the Senate on the consent calendar, December, 1950, Watkins was one of the senators who spoke strongly against letting it pass without full debate. He said that the resolution had been pushed too fast and that the Indians should be heard from before it was given further consideration, since it involved the expenditure of funds allocated to Indians.[19] The resolution directed the Secretary of the Interior to study the respective tribes, bands, and groups of Indians to determine their qualifications to manage their own affairs.[20]

Commissioner Myer, in his Annual Report for 1951, mentions two long-range objectives to the accomplishment of which the Bureau should prepare to give more intensive effort. These were "(1) a standard of living for Indians comparable with that enjoyed by other segments of the population, and (2) the step-by-step transfer of Bureau functions to the Indians themselves or to appropriate agencies of local, state or Federal Government.[21] To accomplish these objectives, it was suggested that qualified personnel should be acquired that were able to spend full time "developing cooperatively with each of the major Indian groups an individualized program of resource development."[22]

In 1952 a Division of Program was established in the central office of the Bureau. Its purpose was to "stimulate, guide and assist the development of joint programming by tribal leaders and Bureau personnel looking toward improvement of the basic economic status of Indians and step-by-step withdrawal of the Bureau from their affairs."[23] Because it spells out in such detail the legislative program that would be accomplished by the eighty-third Congress, 1953, I quote from Myer's Annual Report, 1952, at length for the information of the commission. This is a good example of how nonpartisan Indian legislation is. The policy and program of one administration is carried over almost without change to the next. The change from Democrat to Republican made almost no difference. As a matter of fact the legislative program developed by Commissioner Myer and Secretary Chapman, in cooperation with a Democratic Congress, was enacted after the resignation of Myer and Chapman, with the approval of Secretary McKay, by a Republican Congress before Commissioner Emmons' appointment or while he was on his tour of the Indian country. A conference on Indian matters was held with Senator Watkins, new chairman of the Senate Subcommittee on Indian Affairs, and Congressman Harrison, new chairman of the House Subcommittee on Indian Affairs, February 27, 1953. March 13, 1953, with the approval of Secretary McKay, the Orme Lewis letter, which will be reproduced in full later, went to Senator Watkins. Commissioner Myer resigned March 20, 1953. The Orme Lewis letter went out to Bureau officials, March 25, 1953, as a "basic departmental policy pronouncement."

W. Barton Greenwood finished out fiscal year 1953 as acting commissioner. Glenn E. Emmons was nominated as Commissioner of Indian Affairs in July, 1953. Hearings on his appointment were held July 15 and 28. House Concurrent Resolution 108 passed both houses of Congress unanimously the latter part of July, 1953; other Indian legislation of the eighty-third Congress followed in the next few days.

I quote at length from Myer's Annual Report, 1952:[24]

> As part of the general pattern of withdrawal activities, the Bureau took additional steps during the year to accelerate the transfer of responsibilities for educating Indian children to the regular public school system of the country. In a number of areas, where there are both Indian and non-Indian

children to be educated, public schools and Indian Service schools were merged under a plan of pooled resources and joint responsibility for operations. In other areas, where the school-age population is almost exclusively Indian, consultations were held with local school districts or with State educational officials looking to the outright transfer of responsibilities for the operation of Indian Service schools. Plans for transferring 25 Indian Service schools on this basis were developed before the close of the fiscal year and were expected to be consummated during fiscal year 1953. At the close of the year the Bureau had contracts providing for the education of Indian children with 14 State departments of education and 27 local school districts. One major new contract was consummated during the fiscal year with the Territory of Alaska.

Similar activities were carried on looking to the transfer of responsibilities for the protection of Indian health from the Bureau to appropriate State or local agencies. While no transfers of Indian Service hospitals were accomplished during the year, basic authority for such transfers was provided by enactment of Public Law 291 which was approved April 3, 1952. This act also authorized the admittance of non-Indians as patients in Indian Service hospitals in areas where other hospital facilities were not available.

In presenting its appropriation estimates for the fiscal year 1953, the Bureau requested funds to be used specifically for contracting under the Johnson-O'Malley Act with non-Federal hospitals for the care and treatment of tubercular Indians, particularly Navajos. It was hoped that a total of 400 beds in various hospitals throughout the country could be provided in fiscal year 1953 as one important means of relieving the serious tuberculosis problem on the Navajo reservation. The Bureau also continued its contracting with States under the Johnson-O'Malley Act for provision of public health and preventive medical services to the Indians by the county health departments. At the close of the year the Bureau had 30 contracts of this kind in effect with States, counties, or local health units.

In the field of law enforcement the Bureau conducted numerous negotiations with various tribal groups and with State authorities looking toward a transfer of jurisdictional responsibilities within Indian reservations from the Federal Government to the States. Bureau-sponsored bills were introduced in Congress providing for a transfer of Indian civil and criminal jurisdiction

to the States of Minnesota, Wisconsin, Nebraska, California, Oregon, and Washington. Although none of these bills were enacted, committee hearings were held on several and one (the California transfer bill) was passed by the House of Representatives.

In regard to the role of the new Division of Program:[25]

PROGRAM DEVELOPMENT

In the Bureau's annual report for the fiscal year 1951 reference was made to the need for "a group of qualified personnel, free of responsibility for the everyday administration of Indian affairs, who could devote their full attention to the job of developing cooperatively with each of the major Indian groups an individualized program of resource development accompanied by constantly expanding Indian control over the management of their individual and tribal affairs." This need was met early in the fiscal year 1952 by the establishment and staffing of a Division of Program in the Bureau's Washington Office.

During the fiscal year the new Division devoted its attention largely to two main tasks. One was to develop the major outline of policy and procedure that should govern programming activity throughout the Bureau. The second was for individual members of the Division staff to work actively with Indian tribal groups and local agency staffs in stimulating and guiding the formulation of specific programs aimed at the ultimate objective of Bureau withdrawal from Indian affairs.

On the policy side primary emphasis was given to the principle of consultation with the Indians. In connection with contemplated transfer of functional responsibilities to State or local agencies, this means that the views of the Indians to be affected will be sought and carefully considered before any final action is taken. In the development of comprehensive programs affecting specific Indian groups, the Bureau not only seeks the views of the Indians involved but encourages their maximum participation in the actual job of data analysis and program formulation. In fact, this Bureau's ideal concept of its role in program development is that of a consultant to the Indian groups. As a practical matter, however, it is recognized that much of the initiative and responsibility for program formulation will have to be assumed--at least in the early stages--by Bureau representatives.

Another principle which received considerable emphasis during the year was that the development of a withdrawal program affecting any particular Indian group must be preceded by and based upon a compilation of all the revelant factual data. This includes such things as an inventory of tribal and individual Indian resources, a study of the laws and treaty obligations affecting the group, an appraisal of the status and effectiveness of existing tribal organization, and many others. The actual task of compiling factual data of this type with respect to several major Indian groups was one of the important jobs undertaken by the Division of Program during the fiscal year.

Another facet of Bureau policy on withdrawal was defined in February, 1952, following a visit to the Washington Office of the Bureau by several leading members of the Osage Tribe of Oklahoma. In a letter to the chairman of the Osage Tribal Council the Commissioner of Indian Affairs enunciated three major points which were subsequently reproduced and brought to the attention of other tribes throughout the country. The three points are:

1. If any Indian tribe is convinced the Bureau of Indian Affairs is a handicap to its advancement, I am willing to recommend to the Secretary of the Interior that legislative authority be obtained from the Congress to terminate the Bureau's trusteeship responsibility with respect to that tribe.

2. If any Indian tribe desires modification of the existing trusteeship in order that some part or parts thereof be lifted (such as the control of tribal funds, the leasing of tribal land, as examples), and if the leaders of the tribe will sit down with Bureau officials to discuss the details of such a program of partial termination of trusteeship, we will be glad to assign staff members to work with the group with a view to development of appropriate legislative proposals.

3. If there are tribes desiring to assume themselves some of the responsibilities the Bureau now carries with respect to the furnishing of services, without termination of the trusteeship relationship, we are prepared to work with such tribes in the development of an appropriate agreement providing for the necessary safeguards to the tribe and its members. This statement constitutes in effect, a standing offer by the Bureau to work constructively with any tribe which wishes to assume

either full control or a greater degree of control over its own affairs.

Actual programming activities of the Bureau during the fiscal year were focused primarily on five different types of Indian groups:

First were those groupings in which a substantial number of Indians had expressed a positive desire to achieve full independence from Federal trusteeship and supervision in the near future. In this category were the Indians of California (except for the Agua Caliente Band of Palm Springs), the 41 bands on western Oregon formerly under jurisdiction of the Grande Ronde-Siletz Agency, and the Klamath Tribe of south-central Oregon. Specific legislation designed to facilitate complete withdrawal was developed in consultation with the first two groups and presented to the Congress but not enacted. While no legislation was drafted affecting the Klamath Tribe, a number of consultations on the question of Bureau withdrawal were held during the year involving tribal leaders, representatives of the Oregon State government, and Bureau participants.

The second category included two tribes with substantial assets which are financing with tribal funds a major share of the cost of services and trusteeship provided for them by the Bureau--the Osage Tribe of Oklahoma and the Menominee Tribe of Wisconsin. Although both tribes indicated some initial reluctance to contemplate the prospect of Bureau withdrawal, a number of consultations were held with them during the fiscal year, and efforts were being continued to elicit their active cooperation in the development of constructive programs.

The third category might be called the Missouri Basin group. This includes seven tribal groups which will be more or less directly affected by various flood-control and irrigation projects planned for the upper Missouri Valley and which are consequently faced with the necessity of planning some readjustment to their living patterns. The seven reservations involved are Fort Berthold in North Dakota, Standing Rock in North and South Dakota, and Cheyenne River, Crow Creek, Lower Brule, Rosebud, and Yankton in South Dakota. Programming studies of one kind or another were carried on at all of these reservations during the year. The most intensive work, however, was done at Standing Rock and Cheyenne River.

In the fourth category were several Indian groups, more or less remote from local agency headquarters of the Bureau, which are currently receiving from the Bureau only nominal services and supervision. Groups of this kind which were studied by the Bureau in an exploratory manner during the fiscal year included the Sac and Fox of Iowa, the several Indian bands and tribes of Michigan, and a number of tribes in Kansas and northeastern Oklahoma.

The fifth category included an assortment of tribal groups, such as the Southern Ute and Mountain Ute of Colorado, the Jicarilla Apaches of New Mexico, the Red Lake Band of Chippewas in Minnesota, the tribes under jurisdiction of the Winnebago Agency in Nebraska, and the various bands under the western Washington Agency. Programming discussions were held with all of these groups during the fiscal year 1952, and additional sessions are planned for 1953.

Also in 1952, under authority of House Resolution 698, eighty-second Congress, a letter was written to the Commissioner of Indian Affairs requesting a complete report on the following propositions:[26]

> (1) The manner in which the Bureau of Indian Affairs has performed its functions of studying the various tribes, bands, and groups of Indians to determine their qualifications for management of their own affairs without further supervision of the Federal Government;
>
> (2) The manner in which the Bureau of Indian Affairs has fulfilled its obligations of trust as the agency of the Federal Government charged with the guardianship of Indian property;
>
> (3) The adequacy of law and regulations as assure the faithful performance of trust in the exchange, lease, or sale of surface or subsurface interests in or title to real property or disposition of personal property of Indian wards;
>
> (4) Name of tribes, bands, or groups of Indians now qualified for full management of their own affairs;
>
> (5) The legislative proposals designed to promote the earliest practicable termination of all Federal supervision and control over Indians;
>
> (6) The functions now carried on by the Bureau of Indian Affairs which may be discontinued or transferred to other

agencies of the Federal Government or to the States;

(7) Names of States where further operation of the Bureau of Indian Affairs should be discontinued;

(8) Recommended legislation for removal of legal disability of Indians by reason of guardianship by the Federal Government; and

(9) Findings concerning transactions involving the exchange, lease or sale of lands or interests in lands belonging to Indian wards, with specific findings as to such transactions in the State of Oregon.

The Bureau's response to most of these propositions appeared in House Report Number 2503, eighty-second Congress, second session, a document of 1594 pages, containing 157 maps and numerous tables, published in 1953.[27] Proposition 4 called for the "name of tribes, bands, or groups of Indians now qualified for full management of their own affairs" and resulted in the Bureau sending out an official letter to all Bureau officials, accompanied by a detailed questionnaire. The results of the questionnaire appear in House Report Number 2680, eighty-third Congress, second session, published in 1954. Following is the list of tribes with their readiness to be relieved of federal support indicated. The word "yes" indicates that that particular group is ready to handle its own affairs immediately; "no" indicates those that are not qualified, "in the opinion of local officials of the Indian Bureau:"[28]

Blackfeet: Yes (except for a minority).
California (115 groups listed on pp. 1140-1141 of H. Rept. 2503, 82d Cong., 2d sess.): Yes.
Cherokee and Catawba:
- Cherokee of North Carolina: No.
- Catawba of South Carolina: Yes.

Cheyenne River: No.
Choctaw of Mississippi: No.
Colorado River Agency:
- Hualapai: No.
- Yavapai: Yes (conditionally).
- Havasupai: No.
- Campe Verde: No.
- Fort Mohave: No.
- Cocopah: Yes.
- Colorado River: No.

Colville and Spokane:
- Colville: Yes (conditionally).
- Spokane: Yes.

Consolidated Chippewa:
- Fond du Lac: Yes.
- Grand Portage: Yes (conditionally).
- Leech Lake: Yes (conditionally).

Consolidated Chippewa (cont.)
White Earth: Yes (conditionally).
Nett Lake: Yes (conditionally).
Mille Lac: Yes.
Consolidated Ute Agency:
Southern Ute: No.
Ute Mountain: No.
Crow: No.
Crow Creek and Lower Brule:
Crow Creek: No.
Lower Brule: No.
Five Civilized Tribes: No.
Quapaw area:
Eastern Shawnee: Yes (conditionally).
Ottawa: Yes.
Quapaw: Yes (except for minority).
Seneca-Cayuga: Yes (conditionally).
Wyandotte: Yes (conditionally).
Flathead: Yes.
Fort Apache: No.
Fort Belknap and Rocky Boy's:
Fort Belknap: Yes.
Rocky Boy's: No.
Fort Berthold: Yes.
Fort Hall: Yes (if gradual).
Fort Peck: Yes (except for minority).
Great Lakes Consolidated:
Bad River: No.
Bay Mills: Yes.
Forest County Potawatomi: No.
Hannanville: Yes.
Keweenaw Bay: Yes.
Lac du Flambeau: Yes (conditionally).
Oneida: Yes.
Red Cliff: Yes.
Sac and Fox of the Mississippi in Iowa: No.
Saginaw Chippewa or Isabella: Yes.
St. Croix: Yes.
Sokaogon or Mole Lake: Yes (conditionally).
Stockbridge-Munsee: Yes.
Winnebago of Wisconsin: Yes (conditionally).
Hopi: No.
Jicarilla: No.
Klamath: (?).
Menominee: Yes.
Mescalero Apache: No.
Navajo: No.
Nevada: *
Battle Mountain Colony: Yes.
Carson County: Yes.

Nevada (cont.)
- Duck Valley: Yes.
- Elko: Yes.
- Ely: Yes.
- Fallon Colony: No.
- Fallon: Yes.
- Fort McDermitt: Yes.
- Goshute: No.
- Las Vegas: Yes.
- Lovelock Colony: No.
- Moapa: Yes.
- Pyramid Lake: Yes.
- Reno-Sparks: Yes.
- Ruby Valley: Yes.
- Skull Valley: Yes.
- South Fork: Yes.
- Summit Lake: Yes.
- Walker River: Yes.
- Washoe: No.
- Winnemucca Colony: Yes.
- Yerington Colony: No.
- Yerington (Campbell Ranch): Yes.
- Yomba: Yes.

Northern Cheyenne: No.

Northern Idaho Agency:
- Kalispel: No.
- Kootenai: No.
- Nez Perce: Yes.
- Couer d'Alene: Yes.

Osage: (?).

Papago: No.

Pima Agency:
- Fort McDowell: No.
- Salt River: Yes (conditionally).
- Gila River: No.
- Maricopa or Ak Chin: No.

Pine Ridge: No.

Pipestone: (?).

Red Lake: No.

Rosebud and Yankton:
- Rosebud: No.
- Yankton: Yes (conditionally).

San Carlos: No.

Seminole of Florida: No.

Sisseton-Wahpeton Sioux: Yes.

Southern Plains:
- Absentee Shawnee: No.
- Alabama-Coushatta of Texas: Yes (except for minority).
- Caddo: Yes.

Southern Plains (cont.)
- Cheyenne-Arapaho: No.
- Citizen Potawatomi: Yes.
- Fort Sill Apache: Yes.
- Iowa of Kansas and Nebraska: Yes.
- Iowa of Oklahoma: Yes.
- Kaw: Yes.
- Kickapoo of Kansas: Yes.
- Kickapoo of Oklahoma: No.
- Kiowa-Comanche-Apache: No.
- Otoe-Missouria: No.
- Pawnee: Yes (except for minority).
- Ponca of Oklahoma: No.
- Prairie Potawatomi of Kansas: No.
- Sac and Fox of Kansas and Nebraska: Yes.
- Sac and Fox of Oklahoma: Yes (except for minority).
- Tonkawa: Yes.
- Wichita: Yes (except for minority).

Standing Rock: No.

Turtle Mountain and Fort Totten:
- Turtle Mountain: Yes.
- Fort Totten: Yes (conditionally).

Uintah and Ouray:
- Uintah and Ouray: No.
- Shivwits: No.
- Koosharem: No.
- Indian Peaks: Yes (conditionally).
- Kaibab: No.
- Kanosh: No.

Umatilla: Yes (conditionally).

United Pueblos:
- Acoma: No.
- Cochiti: No.
- Isleta: No.
- Jemez: No.
- Laguna: No.
- Nambe: No.
- Picuris: No.
- Pojaque: No.
- Sandia: No.
- San Felipe: No.
- San Ildefonso: No.
- San Juan: No.
- Santa Anna: No.
- Santa Clara: No.
- Santa Domingo: No.
- Taos: No.
- Tesuque: No.
- Zia: No.
- Zuni: No.

United Pueblos (cont.)
Canyoncito: No.
Alamo: No.
Ramah: No.
Warm Springs: No.
Western Washington:
Chehalis: Yes.
Hoh: Yes.
Lower Elwha: Yes.
Lummi: Yes (conditionally).
Makah: Yes.
Muckleshoot: Yes.
Nisqually: Yes.
Ozette: Yes.
Port Gamble: Yes.
Port Madison: Yes.
Public Domain: Yes.
Puyallup: Yes.
Quileute: Yes.
Quinault: Yes.
Shoalwater: Yes.
Skokomish: Yes.
Squaxon Island: Yes.
Swinomish: Yes (conditionally).
Tulalip: Yes.
Wind River: Yes.
Winnebago Agency:
Omaha: Yes.
Ponca: Yes.
Santee Sioux: Yes.
Winnebago: Yes.
Yakima: No.

* Based on numerical counts of families, competent, marginal and incompetent.

On the basis of the groups, tribes, bands, etc., named by the local Indian Bureau officials themselves, necessary legislation and administrative steps should be taken to effect discontinuance of further operation of the Bureau of Indian Affairs (either by transfer of responsibility for management and supervision over their lives and property directly to individual Indians or groups, to Federal agencies supplying to non-Indian services needed by some Indians, or to the States and local governmental subdivisions) in the following States: California, Michigan, Nebraska, South Carolina, Texas, and Wyoming. Conclusions reached at the local Bureau level may not, of course, coincide with committee conclusions which might be reached after full hearings nor with local findings that all tribes in all named States are found eligible for termination.

With this list and the supporting information drawn from the 1952 questionnaire, Congress now had three studies that were referred to in regard to tribal readiness for termination. The first is the reservation programs submitted in 1944; the second is the Zimmerman report, 1947; and the information included in the response to the Myer's questionnaire, 1952, comprises the third. The information available in these three studies and the lists themselves are often contradictory. Several lists of requirements for readiness for termination have also appeared, both from within and without the Bureau, none of which are followed consistently.

House Concurrent Resolution 108, eighty-third Congress, 1953, names specific tribes that are to be terminated "at the earliest possible time." It also names certain states where all of the tribes are to be "freed from Federal supervision." In these states named specifically all offices of the Bureau of Indian Affairs are to be closed "upon the release of such tribes and individual members thereof from such disabilities and limitations...."

In 1954, hearings were held on the tribes mentioned in H.C.R. 108, with some extras thrown in. These hearings on termination bills were held with representatives of the House and Senate Indian Affairs Subcommittees sitting together:[29]

(1) February 15, 1954: Tribes of Utah (Shivwits, Kanosh, Koosharem, and Indian Peaks Bands of Paiute, Skull Valley Shoshone, and Washakie Shoshone); H.R. 7654 and S. 2670.

(2) February 16, 1954: Alabama and Coushatta Tribes of Texas; H.R. 6282 and H.R. 6547 and S. 2744.

(3) February 17, 1954: Tribes of Western Oregon (Grand Ronde, Siletz); H.R. 7317 and S. 2746.

(4) February 18-19, 1954: Kansas and Nebraska Tribes (Sac and Fox, Iowa, Potawatomi, Kickapoo); H.R. 7318 and S. 2743.

(5) February 23-24, 1954: Klamath of Oregon; H.R. 7320 and S. 2745.

(6) February 24, 1954: Makah of Washington; H.R. 7981.

(7) February 25-26, 1954: Flathead of Montana (Salish and Kootenai); H.R. 7319 and S. 2750.

(8) March 1-2, 1954: Seminole of Florida; H.R. 7321 and S. 2747. (A field visit was made to Florida Everglades and Seminole homes by Congressmen E. Y. Berry and James A. Haley of the Committee, March 11-14, 1954.)

(9) March 2-3, 1954: Turtle Mountain Chippewa of North Dakota; H. R. 7316 and S. 2748.

(10) March 4, 5, 6, 1954: Indians of California; H. R. 7322 and S. 2749.

(11) March 10, 11, 12, 1954: Menominee of Wisconsin; H. R. 7135 and S. 2813.

(12) Field hearings at Reno, Nevada, April 16-17, 1954: Nevada Indians (Ruby Valley Shoshone, Yerington Paiute, Battle Mountain, Carson, Las Vegas, Lovelock, Reno-Sparks, and Yerington Colonies); H. R. 7552.

(13) Field hearings at Klamath Falls, Oregon, April 19, 1954: Klamath Indians; H. R. 7320 and S. 2745.

In addition to those listed above termination proceedings have started in Congress for the Colville of Washington; the Peoria, Wyandotte and Ottawa of Oklahoma; and the Uintah and Ouray (mixed bloods) of Utah, that I am aware of. Some of these requested termination themselves. Of the tribes mentioned above only the following have, to my knowledge, actually been terminated:

1. The 59 bands of western Oregon.

2. The Alabama and Coushata of Texas (in this case federal responsibility has been terminated not by the tribe itself assuming the responsibility, but by it being shifted to the state).

3. Four Paiute bands of Utah.

Of the states mentioned in House Concurrent Resolution 108, the Bureau has been able to withdraw completely only in Texas. Texas had been relieved almost completely of its Indian problem over a hundred years previously when her Indians were removed to Oklahoma Indian Territory. In Florida the Seminoles are far from being ready for termination. California, favorable to termination in 1953, became very cautious after a committee of her legislature studied the question. Termination, of the "piece-meal" variety is proceeding gradually, but California will not accept a final date for assuming all responsibility for the California Indians.[30] To my knowledge, the Seneca and the Six Nations of New York still refuse to break their last ties with the federal government: a $4,500 annuity for distribution of cloth to the Six Nations and $16,250 annual interest to the Seneca on trust funds held for them in the United States Treasury.[31]

By 1954, the resistance to the termination policy statement by Congress (H. C. R. 108) was in full swing, particularly among Indian groups and friends of the Indian groups.[32] The Indian Rights Association and the American

Friends Service Committee, normally somewhat conservative, have spoken out strongly against too-rapid termination.[33] The Governors' Interstate Indian Council, favorable to termination until 1953, grew more cautious in 1954 and set up minimum conditions that should be met by the federal government prior to termination in 1955.[34]

Senators and representatives, under pressure from the folks at home who have looked a second time at what it will cost to assume responsibility for the Indians of their state, are becoming more cautious. Some are speaking openly against too-rapid termination.[35] The point should be made that almost no one seems to be against gradual, planned federal withdrawal, with methods and the timetable reached in agreement with federal, state, county, and Indian interests. On the other hand, more and more informed people are speaking out against "at the earliest possible time" termination, without the necessary precautions being taken.[36]

In my opinion, the commission should spend considerable time considering methods and safeguards that should be written into termination laws, particularly in relation to Indian lands and other matters pertaining to the Indian's property. In matters pertaining to the Indian's person (education, health, welfare, law, and order) much can be said for using the resources available locally, if they are available; and workable agreements can be reached, with the Indians participating in all stages and at all levels in making arrangements and reaching agreements. There is something to be said for having the Indians either individually or in groups apply for final termination as they apply for enfranchisement in Canada, rather than to have the government exert pressure on the Indians to be terminated. They might then be more willing to take preliminary steps short of final termination.

I believe that during the last ten to fifteen years the Bureau of Indian Affairs has been used too often as a scapegoat by members of Congress. It is likely that Friends of the Indian groups and the Indians themselves would make more real progress by working with the Bureau. Of recent years, the Friends groups and the Indians have opposed almost everything the Bureau has done and have offered very little themselves in the way of a workable, constructive program. Some members of Congress have expressed their willingness to support various proposals that have come to them from Friends groups, if they could only demonstrate that they were practical and workable; if they would sell them so they could sell the bill to Congress.[37]

Someone other than the Bureau needs to have the courage to point out the good things about their program. When we are aware of the population problems on some reservations, it is impossible to ignore the necessity of offering Indians the opportunity to go where they can support themselves under favorable conditions. Undoubtedly one of the problems of the Indian Service, and in this they are certainly typical of our culture, is that they tend to oversell their programs. They feel, however, that the Indians are rather lethargic about taking advantage of what, to the Bureau personnel, seems to be marvelous opportunities that should be taken advantage of.

An example of the kind of legislation the Bureau is supporting in Congress is Public Law 959, eighty-fourth Congress, second session, approved August 3, 1956, which authorizes a program of vocational training for Indians primarily in the age group between eighteen and thirty-five. Its purpose is to improve the vocational skills of Indian workers and thereby increase their earning power. It will allow complete support for a man and his family for periods up to two years, according to need. The program includes support during on-the-job training.

It is true that relocation and vocational training are related to the termination idea in that they encourage the individual Indian to leave the reservation and find employment elsewhere, but at the same time programs are being developed (more slowly because they are not easily developed) to encourage more efficient use of the resources on the reservation and to attract industries to reservation areas so the Indian people may find employment without leaving home.

The Bureau has recently announced that it will broaden this industrial development program considerably during the coming year. An industrial development specialist is now established in the central office, and three field offices will be established in Cleveland, Denver, and St. Louis as contact points with industrial concerns. Industrial specialists will also be assigned to six of the Bureau's ten area offices. Their function will be to work directly with tribal organizations and nearby community groups. The vocational and on-the-job training programs will tie in very well with this program as well as fitting individuals for work away from the reservation.[38]

I mention these related areas because I feel that it will be difficult to comment on, criticize, or seek to improve termination processes without seeing them against this larger background. I would like also to include the following comment on the Bureau from the Hoover report on Indian Affairs:[39]

> For twenty years the Service has been professional in tone and has been moved chiefly by a desire to do a good job. This fact should be recognized, and the good faith of civil servants should not be challenged without evidence. It is not just a matter of being fair to public employees. The cost of recklessly making the Indian Service a scapegoat for a disappointing record is that it interferes with progress in formulating and administering public policy.
>
> The Indian Service personnel are in closer touch with Indian problems as a whole than any other group. The total experience of the Service is broad as well as intimate. They have much more data at their command than any other group. Their experience and their data are indispensable in the progressive development of public policy.

FOOTNOTES FOR CHAPTER II

[1]Annual Report, Commissioner of Indian Affairs, 1933, p. 69.

[2]Joseph C. McCaskill, "The Cessation of Monopolistic Control of Indians by the Indian Office," as cited in A Sketch of the Development of the Bureau of Indian Affairs and of Indian Policy (mimeographed), 1956, p. 13.

[3]Commissioner's Circular No. 3537.

[4]U.S. Senate, Indian Affairs Committee, Hearings, Nomination of William A. Brophy to be Commissioner of Indian Affairs, 79th Congress, 1st Sess., Feb. 20 - Mar. 1, 1945.

[5]The Problem of Indian Administration, p. 99.

[6]U.S. House of Representatives, Indian Affairs Committee, Hearings, Creation of Indian Claims Commission, on H.R. 1198 and 1341, 79th Congress, 1st Sess., Mar. 2 - June 14, 1945, and U.S. Senate, Indian Affairs Committee, Hearing, To Create Indian Claims Commission (to provide for powers, duties, and functions thereof, and for other purposes), on H.R. 4497, 79th Congress, 2d Sess., June - July 13, 1946.

[7]The Problem of Indian Administration, pp. 19, 468, 805-811.

[8]Commissioner's Order No. 536, September 17, 1946.

[9]See respective Annual Reports of the Commissioner of Indian Affairs.

[10]Undated memo from Commissioner Brophy in Bureau of Indian Affairs' Central Files (probably early 1947).

[11]A Sketch of the Development of the Bureau of Indian Affairs and of Indian Policy, p. 13.

[12]U.S. Senate, Committee on the Post Office and Civil Service, Hearings, Officers and Employees of the Federal Government, 80th Congress, 1st Sess., on S. Res. 41, pt. 3, p. 547, Feb. 8, 1947, Washington, D. C. Copied as cited in 82d Congress, 2d Sess., House Report No. 2503, Report with Respect to the House Resolution Authorizing the Committee on Interior and Insular Affairs to Conduct an Investigation of the Bureau of Indian Affairs, February 8, 1947, pp. 164-165.

[13]Speech of William E. Warne, "The Public Share in Indian Assimilation," Annual Meeting, Home Missions Council of North America, Inc., January 6, 1948.

[14]Acting Commissioner's Circular No. 3672, May 5, 1948.

[15]Acting Commissioner's Circular No. 3675, May 28, 1948.

[16]Information gained through personal interviews with Bureau personnel.

[17]New York Times, March 6, 1950, 15:5.

[18]Theodore H. Haas, "The Rebirth of Indian Spirit and Action," Address given before the Sixth Convention of National Congress of American Indians, Rapid City, South Dakota, September 22, 1949.

[19]New York Times, December 17, 1950, 54:3.

[20]House Resolution 490, 81st Congress, 2d Sess., 1950.

[21]Annual Report, Commissioner of Indian Affairs, 1951, p. 353.

[22]Ibid.

[23]Annual Report, Commissioner of Indian Affairs, 1952, p. 389.

[24]Ibid. pp. 390-391.

[25]Ibid. pp. 392-395.

[26]House Report No. 2503, pp. 2-3.

[27]See footnote 12 for complete citation.

[28]83rd Congress, 2d Sess., House Report No. 2680, Report with Respect to The House Resolution Authorizing the Committee on Interior and Insular Affairs to Conduct an Investigation of the Bureau of Indian Affairs (Washington, 1954), pp. 3-4.

[29]Ibid. pp. VII-VIII.

[30]Senate, State of California, Progress Report to the Legislature by the Senate Interim Committee on California Indian Affairs, January, 1955.

[31]Director of Indian Service, New York State, The Indian Today in New York State (Albany, 1956), footnote 4, p. 12.

[32]Refer to publications of National Congress of American Indians and to the American Indian, published by American Association of Indian Affairs.

[33]Refer to Indian Truth, published by Indian Rights Association, and unpublished surveys and reports of the American Friends Service Committee, Philadelphia.

[34]See Proceedings of the Governors' Interstate Indian Council, 1957.

[35]As an example, see Lee Metcalf, "The Need for Revision of Federal Policy in Indian Affairs," Indian Truth, vol. 35, no. 1, January-March 1958, pp. 1-8; and Lee Metcalf, "The Story of Two Congresses," Address before 13th Annual Convention, National Congress of American Indians, Salt Lake City, Utah, September 24-28, 1956.

[36]See Congressional Record, New York Times and Guides to Periodical Literature, for the last three years particularly.

[37]U.S. Senate, Indian Affairs Committee, Hearings, Federal Indian Policy, 85th Congress, 1st Sess., on S. 809, S. Con. Res. 3 and S. 331, March 27, May 13 and 16, June 17, July 1 and 22, 1957.

[38]"BIA to Expand Industrial Program," The Amerindian, Vol. 6, No. 6, July-August, 1958.

[39]"Report of the Committee on Indian Affairs," (Hoover Commission), p. 63.

CANADIAN ENFRANCHISEMENT COMPARED TO TERMINATION

The legal status of the Canadian Indian is outlined briefly in a recent reference paper published by the Indian Affairs Branch of the Department of Citizenship and Immigration:[1]

> The Canadian Citizenship Act, insofar as this Branch is aware, does not exclude Indians. This, however, does not change the position of the Indians under the Indian Act. Apart from special provisions in the Indian Act, Indians are subject to federal, provincial and municipal laws, in the same manner as other Canadian citizens Indians may sue and be sued and may enter freely into contractual obligations in ordinary business transactions. Their real and personal property held on a reserve is exempt from taxation, and such property, except on a suit by another Indian, is also exempt from seizure.

Although there is some variation in voting privileges from province to province, the following Indians may vote in federal elections:[2]

> 1. Indians who are not ordinarily resident on a reserve, subject to the same rules and regulations as other Canadian citizens;
>
> 2. Indian war veterans and their wives, whether living on or off reserves;
>
> 3. Indians ordinarily resident on a reserve provided they waive any right to exemption from taxation on personal property held on a reserve.

An eligible Indian may vote at a federal election without altering his status as a member of a band. Indians may presently vote in the provincial elections of Newfoundland, Nova Scotia, Ontario, Manitoba, and British Columbia. They may not vote in the provincial elections of Quebec and Alberta, while in Saskatchewan only veterans are qualified. Indian veterans of World Wars I and II not ordinarily resident on reserves may vote in Prince Edward Island. They are allowed to vote in the Northwest Territories Council elections but not in the Yukon Council elections.[3]

Since 1869, the Indian Act has provided for a form of self-government on the reserves. This has been altered and enlarged through the years "in accordance with democratic principles."[4]

> The Indians now elect band councils consisting of a chief and councillors who correspond with the local elective officers in rural municipalities. However, Indian bands who wish to adhere to their tribal system of choosing chiefs and councillors may continue to do so and exercise the same powers as an elected council. The councils are concerned with local conditions affecting members of the band and work closely with the superintendents. They may make by-laws with regard to various matters of a local nature on the reserves and also exercise control over the expenditure and management of their funds and property. Formerly only males had the right to vote in elections, but under the new Indian Act the right to vote has been extended to include women also. Indian women are taking a keen interest in band affairs and a number have been elected to office.

With some exceptions, band chiefs and councils originate suggestions for expenditures from the Indian trust fund, which is made up of capitalized annuities and other moneys derived from the assets of the various bands.

The present Indian Act became effective in 1951. It replaced the Indian Act of 1876, which had undergone only minor changes in the intervening period. During the review of the objects and policies of Indian administration that preceded the 1951 enactment, the Minister of Citizenship and Immigration made the following statement in the House of Commons:[5]

> The underlying principles of Indian legislation through the years have been protection and advancement of the Indian population. In the earlier period the main emphasis was on protection. But as the Indians become more self-reliant and capable of successfully adapting themselves to modern conditions, more emphasis is being laid on greater participation and responsibility by Indians in the conduct of their own affairs. Indeed, it may be said that ever since Confederation (1867) the underlying purpose of Indian administration has been to prepare the Indians for full citizenship with the same rights and responsibilities as those enjoyed and accepted by other members of the community.... The ultimate goal of our Indian policy is the integration of the Indians into the general life and economy of the country. It is recognized, however, that during a temporary transition period of varying length, depending upon the circumstances and stage of development of different bands, special treatment and legislation are necessary.

The following discussion of enfranchisement outlines the process used in Canada to "terminate" federal responsibility for Indians. One should notice the distinction made between the right of an Indian to vote as a citizen and his position after enfranchisement:[6]

An Indian who votes in any of the provinces which have extended that right to him, or in the federal elections if qualified to do so according to the conditions outlined in the preceding section, still retains his Indian status under the Indian Act. The one exception is that, if he lives on a reserve and is not a war veteran or the wife of one, he forfeits his exemption from taxation if he exercises the vote in federal elections.

Enfranchisement on the other hand, refers to a legal process by which an Indian gives up his Indian status and all the rights and privileges to which he is entitled as an Indian under the Indian Act. He cannot hold property on a reserve and is expected to dispose of any property he has held there in the past.

In return for giving up these rights and privileges, an enfranchised Indian assumes the full rights and responsibilities of a Canadian citizen. He can vote in federal and provincial elections, in whatever province he happens to dwell. He must pay taxes, earn his living and educate his children under the same conditions as other Canadians, and he is subject to the same liquor laws as they are.

Many Indians regard their Indian status as their most precious inheritance. Some of them do not understand that they may have voting privileges without giving up these rights, that is without becoming enfranchised. Thus, in the Ontario provincial elections of 1955, when Indians were allowed to vote for the first time, some Indians were afraid that in so doing they would forfeit their status as Indians.

How does an Indian become enfranchised? The conditions are set forth in the Indian Act in Sections 108-112. They may be summarized as follows:

After an Indian has applied to the Minister of Citizenship and Immigration for enfranchisement, the Governor in Council may, on the Minister's recommendation, declare the Indian, his wife, and their minor unmarried children enfranchised, provided that:

(a) the Indian is 21;
(b) he is capable of assuming the duties and responsibilities of citizenship;
(c) he is capable of supporting himself and his dependents.

An Indian band may apply for enfranchisement as a unit, and the Governor in Council may grant enfranchisement if it believes the band is capable of managing its own affairs as

> a municipality or part of a municipality and if it submits a suitable plan for the disposal or division of the band funds and the lands in the reserve.
>
> When a band becomes enfranchised, all the members of the band become enfranchised citizens.

Although, as mentioned above, bands may be enfranchised, only four have applied or "expressed an interest" in it. To my knowledge none of these, at this time, have become enfranchised.

Actually it has been possible to cease to be an Indian by legal definition through the enfranchisement process for many years in Canada, as it has been possible to become a citizen and cease to be identified as an Indian in the United States. The enfranchisement process, however, has had a finality to it that has never been practiced in the United States, although under allotment it probably could have been, until the recent termination procedures were developed.

We find the same kind of questions being raised in relation to the enfranchisement of the Indians of Canada that are raised concerning the termination of the Indians of the United States. In a recent speech before the Kingston, Ontario, Kiwanis Club, W. J. Morris, of the Department of Anthropology, University of Toronto, made these remarks to "stimulate interest to rethink the promises of our hitherto paternalistic attitudes and policies:"[8]

> Canadians might begin asking themselves what they want done about their Indian population. The Federal Government spent over twenty million dollars last year--and this spending will likely increase this year--in the administration of a minority whose numbers are less than one percent of our total population and who are exceeded in numbers by other minorities for whose affairs no special branch of government has been created.
>
> Let us ask ourselves if it is really necessary or of benefit to Indian children to educate them in Indian schools when other regular provincial schools are attended by non-Indian children? Is it wise to continue extending medical services to Indians which we have never extended to the rest of our people? What about taxation of land, and income earned on reserves? What about legal responsibilities to honour debts incurred in the conduct of personal or business affairs? How much are these protective devices really needed, and do they fulfill a useful role? Do we really feel that Indians are such dreadfully incompetent citizens that they can never be expected to assume the same duties and responsibilities of citizenship which other Canadians are required to assume? Are these devices of benefit to the Indian or do they tend to retard his integration?

They would appear to be second class citizens if we think they cannot learn to add or subtract, or engage in business activities as you and I do. They are second class citizens if they cannot be expected to understand our political framework sufficiently well to enable them to exercise their franchise in provincial elections. On this point there seems to be a difference of opinion. Some provinces allow them to vote and others don't. Is their physical constitution such that they cannot consume alcoholic beverages just as you and I. I know of no reputable scientist who claims they are--and yet regulations concerning this subject are so complicated some lawyers can't understand them let alone the poor Indian.

Such attitudes as these fail to take into consideration the fact that Indians are leaving their reserves voluntarily in increasing numbers to assume new roles in our towns and cities. Many have already distinguished themselves in the professions and our courts. One has been elected to a Provincial Legislature. But for the most part they are living just as you and I, as ordinary citizens of Canada, but some unfortunately do not wish to be thought of as being Indian and do everything they can to disguise the fact of their heritage.

> Just as it is desirable that Indians should be given every opportunity to compete in our industrial society, so they should also be encouraged to retain certain aspects of their native traditions which would enrich our national life.

Mr. Morris was with the Indian Affairs Branch in Ottawa for a year prior to joining the staff of the university.

Although the study involved only the Indians of British Columbia, Hawthorn, Belshaw, and Jamieson did not report very favorably on the results of the enfranchisement process they observed there. It seemed to them that when the Indians viewed what could be gained by enfranchisement objectively, they could see there was little to be gained and much to be lost. They observed that one of the greatest attractions to the Indians seemed to be that he gained "full drinking privileges," which he can gain in no other legal way. They state "there is widespread suspicion, which we believe to be well founded, that many unenfranchised Indians are involved in bootlegging."[9]

From their observation in British Columbia, it appeared that "the operation of the policy of enfranchisement, and the implications of the concept, are fraught with misunderstandings and confusions." Two further interesting observations follow:[10]

> We can conclude that the process of enfranchisement is very slow, and by no means keeps pace with the rise in population. The corollary is that despite enfranchisement, the

> number of persons of Indian status grows considerably, and that enfranchisement is an ineffective means of securing assimilation.
>
> We would estimate that in British Columbia the number of male adults who sought enfranchisement because they had become acculturated and wished to break with Indian life, and who remained in Canada, would not be more than ten a year, and in most years would not be more than four or five. We can only conclude that the policy of enfranchisement is a complete failure, and that it has no effect in attracting Indians into Canadian society at large.

Although the work cited above was not published until mid-1958, the observations on enfranchisement seem to have been made in 1954 and 1955. The number being enfranchised has increased over the last seven years. Those enfranchised annually according to the respective reports of the Indian Affairs Branch were 1951, 390 enfranchised; 1952, 501 enfranchised; 1953, 847 enfranchised; 1954, 789 enfranchised; 1955, 760 enfranchised; 1956, 756 enfranchised; and 1957, 841 enfranchised. For the six years 1941 to 1946, there was an average of 157 Indians enfranchised annually. For the six-year period 1947 to 1952, the average had increased to 412. For the last five years the average is 798.6.[11]

Much of the increase since September 4, 1951, has resulted from the fact that in accordance with the new Indian Act, Indian women marrying non-Indians are enfranchised by their marriage. Minor unmarried children born to the woman prior to the marriage are also enfranchised.[12] These Indian women and their minor unmarried children comprised 304 of the 847 enfranchised in 1953.

Considering the number of adult males voluntarily enfranchised in relation to the growth of the population, it is apparent that the process of enfranchisement is not greatly affecting the total Indian population in Canada. Of course, the same could be said in relation to the number terminated since 1953 in the United States.

It is probably fair to observe that methods and results have not been given enough study either in Canada or the United States to warrant extensive use of these processes. There has been greater tendency to show impatience and exert pressures in the United States than in Canada, but we are not by nature a patient people.

FOOTNOTES FOR CHAPTER III

[1]Indian Affairs Branch, Department of Citizenship and Immigration, The Canadian Indian (Ottawa, Canada, 1957), p. 11.

[2]"The Indian People of Canada," Citizen, a publication of the Canadian Citizenship Branch, Department of Citizenship and Immigration (February, 1958), p. 10.

[3]Ibid. p. 11.

[4]The Canadian Indian, p. 12.

[5]Ibid. pp. 10-11.

[6]"The Indian People of Canada," loc. cit., pp. 11-12.

[7]The Indian Act, R. S. C., 1952, C. 149 as amended by 1952-53, C. 41 and 1956, C. 40.

[8]W. J. Morris, "Our Non-Vanishing Indians," an address given before Kingston, Ontario, Kiwanis Club (September 9, 1957), pp. 4-5. Reproduced for distribution to Area Directors by the U.S. Bureau of Indian Affairs, March 26, 1958, by Homer Jenkins, Chief, Branch of Tribal Programs.

[9]Hawthorn, Belshaw, and Jamieson, The Indians of British Columbia (University of California Press, Berkeley, 1958), pp. 481-484.

[10]Ibid. p. 482.

[11]See respective Annual Reports of the Indian Affairs Branch. Available as reprints from the Annual Report of the Department of Citizenship and Immigration (Ottawa, 1951-1957).

[12]Indian Act, Section 108.

IDENTIFYING KINDS OF FEDERAL WITHDRAWAL

In his study of the Office of Indian Affairs, Laurence F. Schmeckebier states that:[1]

> The ethical reasons underlying the activities of the United States on behalf of the Indians are the need of preparing him for an economic system entirely foreign to his previous condition, the fact that unless protected he is likely to be defrauded by his white neighbor, and the circumstance that as the several states are now allowed to tax Indian property held by the United States in trust, they cannot be expected to expend state funds for Indian benefit.
>
> Congress has decided that the end of governmental control over the individual Indian is reached when a patent in fee to his allotment is issued, or when the restrictions on the alienation of his land are removed. This is the logical point for ending the relation, as the Indian is supposed to be competent to manage his own affairs when this action is taken.

The Allotment Act of 1887 then, with its antecedents, was an attempt to develop a method of federal withdrawal by transferring the federal responsibility for the property and the person of the Indian to the Indian or to the state, which would receive him as a tax paying citizen.

Since the Federal Constitution and Supreme Court decisions make it clear that the Indian, as such, is the responsibility of the federal government and not the state, the reasons for his being set apart and dealt with as a peculiar kind of person would have to be removed if the United States was to achieve its goal of integration and assimilation of the Indian. When that occurred when he was able to assume the responsibilities that other citizens were heir to, it was felt that he would also be ready to inherit the same rights and liberties.

But few of the methods of transferring to other agencies the responsibilities that the Bureau of Indian Affairs has assumed for the Indian from time to time on behalf of the United States have envisioned complete or final withdrawal. Normally these methods have been of the type we now call "piecemeal." These involve the transfer of a particular function to another agency.[2]

We have suggested above two kinds of transfer process:

> (1) The "piecemeal" or function by function transfer, sometimes for all tribes within a county or state. These have tended to be functions of service to the Indian as a person,

such as education, health, welfare.

(2) The final or total type of withdrawal, which, since it would involve the property of the Indian as well as the services available to him as a person, would require special legislation. The Allotment Act of 1887 and the recent termination acts are examples of the second method of transfer. This method compares closely to the enfranchisement process in Canada.

The "piecemeal" transfer of functions has been going on for many years and in some states has resulted in almost complete cessation of Bureau activities, other than contractual arrangements for Johnson-O'Malley type funds.

As I have indicated previously, it has also been possible since the colonial period and very early after the establishment of the national government for individual Indians to gain title to land, become citizens, and cease to be legally classified as Indians.

It has been suggested that cooperation with or transfer of responsibilities from the Bureau to other federal agencies should not be classified as withdrawal, since the Indians are a federal responsibility and the federal government should have the right to assign such responsibilities where it chooses.

Historically, however, the Bureau of Indian Affairs has been the agency charged by Congress with executing the laws passed on behalf of the Indian. Perhaps for our purpose a more significant reason is that these transfers are normally made to other federal agencies carrying on the same functions for other citizens. Once the transfer has been made there is a tendency to make the service to the Indian identical or similar to that provided to other citizens, normally through personnel assigned for such purposes to function in the various states. In other words, after the transfer has been made a service sometimes ceases to be a special service to Indians, and, therefore, a federal service special to Indians has been withdrawn.

The method of withdrawal or devices that lead to withdrawal I will list as

1. cooperation
2. transfer
3. "piecemeal" withdrawal, and
4. complete withdrawal or termination.

These devices may be used in the Bureau's relation with other federal agencies, with states or local governments, or with the Indian tribes. Let us find some examples of the use of the various devices.

1. Examples of Cooperation.
   a. With other federal agencies
      (1) U.S. Public Health Service began cooperation with

Indian Service in 1926 by loaning one of its physicians to the Bureau to head Indian medical service. This cooperation continued until transfer.

(2) Department of Health, Education, and Welfare is cooperating by having social security gradually replace direct welfare from Bureau to Indians.

b. With state or local agencies
(first 3 normally on contractual basis)
(1) Health
(2) Education
(3) Welfare
(4) Law and order

2. Examples of Transfer.

a. To other federal agencies
(1) Transfer of Indian Health to U.S. Public Health Service.
(2) Soil Conservation work has been transferred back and forth. Could also be used as example of cooperation.

b. To state or local agencies
(1) Law and order in some states.
(2) Welfare in some states, under social security.
(3) The relocation program is a method of transferring all service functions to states, sometimes temporarily, sometimes permanently.

c. To the Indian tribes

Under the Indian Reorganization Act tribal charters generally provide for gradual transfer of responsibility to tribes, at their request, after 5 to 10 years have elapsed.

3. "Piecemeal" Withdrawal.

In demonstrating the use of this method I will use the Umatilla Tribe as an example to indicate how federal functions are gradually being turned over to states and counties wherever Indians are located:[3]

Roads

"The Bureau road system at Umatilla has been steadily reduced over the past several years through transfer of certain roads to the County under County-Bureau agreement.... Further transfers of roads to the county are under consideration. In most cases prior to transfer some construction by the Bureau will be necessary to meet standards acceptable to the County."

Welfare

"Welfare is provided through State and County offices, with the Agency participating only to the extent of furnishing

information for individual cases. Welfare services are available to Indians on the same basis as to other citizens. It is reported that the welfare agencies have a good understanding of the Indian problems and are sympathetic to their needs. Cooperation is excellent and the Acting Superintendent is invited to refer cases to the local authorities. Excellent relationships also exist with the Juvenile Court."

Education

"Education is provided in the public schools. Financial assistance for Indian children from the Reservation area is available under provisions of Public Law 876 administered by the Department of Health, Education and Welfare rather than from the Johnson-O'Malley as in the past. Except for the annual school census, and assistance in the awarding of tribal scholarships and applications to Haskell, there are no staff responsibilities at Umatilla. The Acting Superintendent or Administrative Officer provides such assistance as may be needed."

Law and Order

"Criminal and civil jurisdiction is under the state and county since passage of Public Law 280. No serious problems reported, although tribal members continue to be apprehensive over fishing and hunting rights and some problems of enforcement exist in connection with the tribe's closing the reservation. It is reported that the services provided in law and order from county authorities is good."

Health

"The program is under the direction of the Public Health Service with the Agency Acting Superintendent serving as the PHS designated official. A PHS clerk located at the Agency prepares and processes applications for approval of Acting Superintendent. An Indian sanitarian aid (PHS) is being established. A community health worker (PHS) headquartered at Warm Springs services Umatilla through regularly scheduled trips. Dependent upon availability of funds, PHS is considering the designation of a PHS staff member in Umatilla with full authority and responsibility for health activities If this is accomplished, BIA Agency staff would be relieved of direct responsibility for the program."

(Just for the information of the commission, so they may see some of the functions carried on as tribal activities, we will copy that entire section).

"Miscellaneous Activities

"A. Distribution of Celilo Settlement Fund

The programming and distribution of those funds (amounting to more than $3,000 to each tribal member) will be a major undertaking. Although the approved plan places basic responsibility in a tribal approval committee, the agency staff, especially the administrative personnel, will be required to furnish assistance and guidance. The Tribe will provide additional employment for this effort. The Superintendent's approval will be required in those cases where Approval Committee determines payment is to be made in full directly to member.

"B. Tribal Enrollment

The tribal membership roll prepared under the Celilo distribution plan is now under consideration for approval. This will provide a basic roll for use in the future. The proposed roll contains 1,217 names. It is estimated that nearly 60% of the membership resides outside of the reservation area.

"C. Industrial Development

The Umatilla Tribe may have an opportunity to participate in the industrial development at the McNary townsite under authority of Public Law 85-185, 85th Congress. Because of the special nature of this activity, it is believed the Umatilla Agency workload need not be increased. Trained industrial development personnel may be required during the formative stages of the effort. Increased employment opportunities to members now on the Reservation would become available with industrial development of the McNary site under this program.

"D. Tribal Government

Umatilla tribal government is vested in the Board of Trustees under an approved constitution (not IRA). The General Council has been active in an advisory capacity in connection with the Celilo Settlement Funds. The Agency staff must continue working closely with those governing bodies as Bureau-tribal relationships are adjusted in the future."

4. Termination[4]

As an example of termination I will use the 59 western Oregon bands or groups. The date of the termination act is August 13, 1954. The act allowed a period of two years to accomplish its provisions. The termination proclamation "declaring that the Federal trust relationship to the tribe and its members has terminated" was effective as of August 13, 1956.

In his annual report for 1952, cited at length above, Commissioner Myer listed five different types of Indian groups among which programming activities were proceeding looking toward termination.[5] The western Oregon Indians were listed in the first group: those "in which a substantial number of Indians had expressed a positive desire to achieve full independence from Federal trusteeship and supervision in the near future."

The western Oregon Indians might also have been listed with group four: "...Indian groups, more or less remote from local agency headquarters of the Bureau, which are currently receiving from the Bureau only nominal services and supervision." The Utah Paiute bands that have also been terminated would be classified in the same group. Both the Paiutes and the western Oregon Indians were terminated very rapidly. Only two years elapsed from the date of the act to the date of the termination proclamation. Neither of the groups had tribal assets of any consequence. Many of the individual Indians in each case were very poor.

The most frequent excuse you hear for their termination is that they were not receiving any benefits from the Bureau anyway. I have referred to this as termination by default. If both of these groups had been allowed a few years to participate in the Bureau's present vocational training program they could have benefited by it. There were training programs in connection with the termination process, but they began late and were not nearly as elaborate as those being provided for tribes presently preparing for termination.

Those Indians referred to as the western Oregon tribes, bands, or groups live on the coastal area of Oregon from Portland south to the California border. The Siletz Reservation and the Grande Ronde Reservation, which comprise about two-thirds of the Indians terminated, are located a few miles from the coast, Grande Ronde about sixty-five miles and Siletz about a hundred miles south and west of Portland. The remainder of these Indians are scattered in small groups throughout the coastal area southward from the Grande Ronde-Siletz region.

In a field trip to the area, Leonard Allen, vocational training officer for the Portland area office, Bureau of Indian Affairs, a person who knew the area and the Indian families very well, accompanied me into the field. The allotments held by these Indians, which now, of course, are their personal property, lie inland in a section of rolling hills which is, in the main, cut-over timber area. Their chief occupation in the past has been related to the lumber industry. Now, however, the area has been largely cleared of good timber, and there is extensive unemployment. The land they occupy is used chiefly for grazing, if it is used productively at all.

I found the Indians to be much like Indians elsewhere. Some have, through their industry, gained self-respect from their neighbors in the area where they live. My observations lead me to believe that but few of the families would have an economic status equal to the average middle class non-Indians in the United States. The majority would be on about the same economic level as the poor non-Indian families. You find very crowded conditions in the

homes. Sometimes more than one family live in a small house. This, too, is common among Indians.

In addition to visiting the Indians themselves, we also called on county welfare agents, public health nurses, county sheriffs, superintendents of schools, loan agencies, local storekeepers with whom Indians did credit business, and state employment offices. We found little evidence of discrimination. Some had stereotyped views of what an Indian was like and because of this would probably find that they tended to fit the pattern. The normal reaction was that they had, over the years and not just since termination, almost ceased to think of these people as Indians and tended to think of them as they would other persons with similar economic background.

There was repeated evidence that many of the Indians drank heavily, that they did not manage their personal affairs very well, that those on the lower economic levels were not good credit risks, that several families in each center of Indian population received welfare assistance quite regularly, that Indian parents often did not encourage their children to attend school regularly, and that it was difficult to keep some Indian employees on the job, causing employers to resist hiring Indians. Often, after telling us of their faults they would add that they found the Indian families to be very similar to non-Indian families with similar background and on the same economic level.

We talked to several Indians and also a few non-Indians, old timers in the area, who felt that it was a mistake to try to recreate the Indian groups under the Indian Reorganization Act. They felt that they had become very well adjusted prior to that time and that upsetting that adjustment was retrogression and not progress. One Indian stated that this was the second time they had been terminated, once in the "force patent" period under the Allotment Act (1917-1921) and now again. He also stated that it would have been better to leave them as they were in the 1920's rather than trying to reconstitute them as tribal entities.

It is my opinion that the Bureau employees who drew up the termination program gave an impression in regard to these Indians that was more favorable than it should have been. They are not economically as well off as it is indicated; the Bureau had not done nearly as much for them as stated; and I feel that the Indians have many problems remaining that it will be difficult for them to solve independently. Some have what appear to be legitimate claims against the United States. How can these be prosecuted in the name of tribal entities that no longer exist and without the financial resources that might have been able to aid organized groups.

I have the impression that these people are satisfied with the results of termination thus far, probably largely because they had never received much and, therefore, had little to lose. They did vote to be terminated; the state and county officials were consulted and agreed to assume the responsibilities for health, education, welfare, etc., which they had already been assuming to some extent, anyway. But I believe that this example of termination (and I would place the Paiutes in the same category) is one that the United States and its Indian Bureau has little reason to be proud of. Shifting a knotty problem

from the national government to the state government, still unsolved, is not necessarily progress. The Paiute and western Oregon termination remind me very much of the bad kind of relocation. Hurried termination is not wise.

There needs to be a policy statement outlining what constitutes readiness for termination, and no group of Indians should be terminated until they are ready. More consideration needs to be given to the development of methods of preparing a group for termination. More safeguards in regard to services to be rendered by state and local agencies need to be written into termination laws. There should be provision for inspection or review by Bureau representatives to see that the Indians are receiving the same consideration after termination as non-Indians are given by the same local agency.

After termination the Indians terminated should still have consultation services available from the Bureau for an interim period while they are learning to get along in the non-Indian world. There should be no funds available, only professional assistance, chiefly of a guidance nature. In our culture when a daughter marries, the husband is supposed to support her; but we don't forbid her coming home to the folks occasionally for a pat on the back, some moral support, and now and then some guidance.

There are many approaches to withdrawal of federal services. Some I have outlined above; another, related to allotment is still going on. This occurs when an Indian is given title to his land and is able to sell it. All of the approaches that I am aware of are being used at the present time.

House Concurrent Resolution 108, 83rd Congress, 1st session, 1953, is government policy; and programming with eventual termination in mind is going on with many Indian tribes. The Orme Lewis letter is a basic document to the congressional policy statement. It is included here with the cover letter from Acting Commissioner Greenwood forwarding it to all Bureau officials:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Washington 25, D. C.

March 25, 1953

Memorandum

To: Bureau Officials

From: Acting Commissioner, Bureau of Indian Affairs

Subject: Basic departmental policy pronouncement

The attached copy of a letter written by Assistant Secretary Orme Lewis to Senator Watkins covers four key issues vital to the administration of Indian Affairs, and you will recognize it to be a most important basic policy

pronouncement. Mr. Lewis has approved the duplication of the letter for distribution to the field for the information of field officials and tribal officers.

(Sgd.) H. Barton Greenwood

Acting Commissioner

Attachment

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Washington 25, D. C.

March 13, 1953

My dear Senator Watkins:

I regret the delay in advising you of the attitude of the Department with respect to the Indian matters which were discussed with you and Congressman Harrison on February 27. As you know, it was necessary that I discuss the four questions with Secretary McKay, and it was not until a few days ago that we were able to devote sufficient time to the matter. The four points under consideration have now been resolved and you may consider the following statements to represent the general policy of the Department on these matters.

1. Federal responsibility for administering the affairs of individual Indian tribes should be terminated as rapidly as possible as the circumstances of each tribe will permit. This should be accomplished by arrangements with the proper public bodies of the political subdivisions to assume responsibility for the services customarily enjoyed by the non-Indian residents of such political subdivisions and by distribution of tribal assets to the tribes as a unit or by division of the tribal assets among the individual members, whichever may appear to be the better plan in each case. In addition, responsibility for trust properties should be transferred to the Indians themselves, either as groups or individuals as soon as feasible.

2. Payments of current tribal income should be made on a pro rata basis to the individual members of each tribe with due regularity where such payments are consistent with the point of safety in the protection of the tribe as a whole and recognize the responsibility of the tribe to contribute a fair share of the cost of services.

3. It is felt that rehabilitation legislation can best be adopted by a single measure, although it is recognized that such legislation will require much consideration. In the interim, it may be necessary to adopt rehabilitation

measures for individual tribes or areas. The Department will be glad to participate in any manner you may suggest.

4. The Department will make prompt reports on all bills submitted for comment when such measures are noncontroversial in nature and, as to others, will make the reports as promptly as circumstances permit.

It was a pleasure to meet with you and Congressman Harrison and exchange ideas on the problems confronting your Committee and the Bureau of Indian Affairs. The opportunity to do this was appreciated, and we will be more than happy to be of such assistance as we may whenever you have occasion to call upon us.

Sincerely yours,

(Sgd.) Orme Lewis

Orme Lewis,
Assistant Secretary

Hon. Arthur V. Watkins,
Chairman, Senate Subcommittee on
Indian Affairs,
United States Senate,
Washington 25, D. C.

OLewis:fmb

cc: Adm. Asst. Secy. Beasley
Commr. Indian Affairs
Secy. Lewis

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FOOTNOTES FOR CHAPTER IV

[1]Laurence F. Schmeckebier, The Office of Indian Affairs (Baltimore, 1927), p. 9.

[2]Theodore W. Taylor, "Regional Organization of the Bureau of Indian Affairs." A first draft of a doctoral dissertation as submitted to the Department of Political Science, Harvard, contains a section dealing with transfer of functions to other federal agencies, to the Indians, and to states and counties, including both "piecemeal" and terminal transfers. (Mr. Taylor spent some time with the Bureau of Indian Affairs and is now in the office of an assistant secretary, Department of the Interior. I saw his study in Washington after the Commission's meeting at Pierre, South Dakota, and was happy to learn that the conclusions I had reached and his were very similar. He has most graciously made his study available to me.)

[3]Portland Area Office, "Report on Umatilla Activities," November, 1957. Ditto copy.

[4]Termination documents available to me were: House and Senate Committees on Interior and Insular Affairs, Joint Hearings, Termination of Federal Supervision over Certain Tribes of Indians, Part 3, Western Oregon, 83rd Congress, 2d Sess., on S. 2746 and H.R. 7317, February 17, 1954; U.S. Senate, 83rd Congress, 2d Sess., Report No. 1325, Termination of Federal Supervision over Property of Certain Indians in Western Oregon, May 12, 1954; and, Memorandum from Commissioner of Indian Affairs to all Area Directors, October 3, 1957, Subject: Report on termination of federal trusteeship of the Indians of western Oregon under Public Law 588, 83rd Congress.

[5]See pages 42-43 above.